

**GENERAL SERVICES ADMINISTRATION
FEDERAL ACQUISITION SERVICE**

**AUTHORIZED INFORMATION TECHNOLOGY SCHEDULE PRICELIST
GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY
EQUIPMENT, SOFTWARE, AND SERVICES**



Contract Number: GS-35F-386CA

**Special Item Number 132-32 – Term Software License
Special Item Number 132-40 – Cloud Computing Services
Special Item Number 132-51 – Information Technology Professional Services**

**Avoka USA, Inc.
10901 West 120th Avenue, Suite 335
Broomfield, CO 80021
Phone: (888) 840-3196
Fax: (888) 290-8879
www.avoka.com**

Business Size / Status: Small Business

Period Covered by Contract: 06/25/2015 - 06/24/2020

Pricelist current through Contract Award, dated 06/25/2015.

Products and ordering information in this Authorized Information Technology Schedule Pricelist are also available on the GSA Advantage! System (www.gsadvantage.gov).



Special Item Number 132-32, Term Software Licenses

FSC Clauss 7030 – Information Technology Software
Application Software, E-Commerce Software

Special Item Number 132-40, Cloud Computing Services

Special Item Number 132-51, Information Technology Professional Services

FPDS Code D302	IT Systems Development Services
FPDS Code D307	Automated Information Systems Design and Integration Services
FPDS Code D399	Other Information Technology Services, Not Elsewhere Classified

Note 1: All non-professional labor categories must be incidental to and used solely to support hardware, software and/or professional services, and cannot be purchased separately.

Note 2: Offerors and Agencies are advised that the Group 70 – Information Technology Schedule is not to be used as a means to procure services which properly fall under the Brooks Act. These services include, but are not limited to, architectural, engineering, mapping, cartographic production, remote sensing, geographic information systems, and related services. FAR 36.6 distinguishes between mapping services of an A/E nature and mapping services which are not connected nor incidental to the traditionally accepted A/E Services.

Note 3: This solicitation is not intended to solicit for the reselling of IT Professional Services, except for the provision of implementation, maintenance, integration, or training services in direct support of a product. Under such circumstances the services must be performance by the publisher or manufacturer or one of their authorized agents.



132-32STLOC, 132-40STLOC, 132-51STLOC: Section 211 of the E-Government Act of 2002 (the Act) amended the Federal Property and Administrative Services Act to allow for "Cooperative Purchasing." Cooperative Purchasing allows for the Administrator of General Services to provide states and localities access to certain items offered through the General Services Administration's (GSA's) [Federal Supply Schedule 70](#), Information Technology (IT) Schedule contract. The information technology available to state and local governments includes automated data processing equipment (including firmware), software, supplies, support equipment, and services.

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**INFORMATION FOR ORDERING ACTIVITIES
APPLICABLE TO ALL SPECIAL ITEM NUMBERS**

SPECIAL NOTICE TO AGENCIES: Small Business Participation

SBA strongly supports the participation of small business concerns in the Federal Acquisition Service. To enhance Small Business Participation SBA policy allows agencies to include in their procurement base and goals, the dollar value of orders expected to be placed against the Federal Supply Schedules, and to report accomplishments against these goals.

For orders exceeding the micropurchase threshold, FAR 8.404 requires agencies to consider the catalogs/pricelists of at least three schedule contractors or consider reasonably available information by using the GSA Advantage!™ on-line shopping service (www.gsaadvantage.gov). The catalogs/pricelists, GSA Advantage!™ and the Federal Acquisition Service Home Page (www.gsa.gov/fas) contain information on a broad array of products and services offered by small business concerns.

This information should be used as a tool to assist ordering activities in meeting or exceeding established small business goals. It should also be used as a tool to assist in including small, small disadvantaged, and women-owned small businesses among those considered when selecting pricelists for a best value determination.

For orders exceeding the micropurchase threshold, customers are to give preference to small business concerns when two or more items at the same delivered price will satisfy their requirement.

1. GEOGRAPHIC SCOPE OF CONTRACT:

Domestic delivery is delivery within the 48 contiguous states, Alaska, Hawaii, Puerto Rico, Washington, DC, and U.S. Territories. Domestic delivery also includes a port or consolidation point, within the aforementioned areas, for orders received from overseas activities.

Overseas delivery is delivery to points outside of the 48 contiguous states, Washington, DC, Alaska, Hawaii, Puerto Rico, and U.S. Territories.

Contractors are requested to check one of the following boxes:

The Geographic Scope of Contract will be domestic delivery only.

2. CONTRACTOR'S ORDERING ADDRESS AND PAYMENT INFORMATION

CONTRACTOR'S ORDERING ADDRESS: Avoka USA, Inc.
10901 West 120th Avenue, Suite 335
Broomfield, CO 80021
Phone: (888) 840-3196

CONTRACTOR'S PAYMENT ADDRESS: Avoka USA, Inc.
Attn: Accounts Receivable
10901 West 120th Avenue, Suite 335
Broomfield, CO 80021

Contractor must accept the credit card for payments equal to or less than the micro-purchase for oral or written orders under this contract. The Contractor and the ordering agency may agree to use the credit card for dollar amounts over the micro-purchase threshold (See GSAR 552.232-79 Payment by Credit Card). In addition, bank account information for wire transfer payments will be shown on the invoice.

The following telephone number can be used by ordering activities to obtain technical and/or ordering assistance:

Phone: (888) 840-3196
Fax: (888) 290-8879

3. LIABILITY FOR INJURY OR DAMAGE

The Contractor shall not be liable for any injury to ordering activity personnel or damage to ordering activity property arising from the use of equipment maintained by the Contractor, unless such injury or damage is due to the fault or negligence of the Contractor.



4. STATISTICAL DATA FOR GOVERNMENT ORDERING OFFICE COMPLETION OF STANDARD FORM 279

Block 9: G. Order/Modification Under Federal Schedule
Block 16: Data Universal Numbering System (DUNS) Number – 78-813-7151
Block 30: Type of Contractor – **B. SMALL BUSINESS**
Block 31: Woman-Owned Small Business – **NO**
Block 37: Contractor's Taxpayer Identification Number (TIN) - 20-8044660
Block 40: Veteran-Owned Small Business – **NO**

- 4a. CAGE Code: **4MLM6**
- 4b. Contractor has with the System for Acquisition Management (SAM) Database.

5. FOB DESTINATION

6. DELIVERY SCHEDULE

- a. TIME OF DELIVERY: The Contractor shall deliver to destination within the number of calendar days after receipt of order (ARO), as set forth below:

SPECIAL ITEM NUMBER	DELIVERY TIME (Days ARO)
132-32 / 132-32STLOC	Negotiated at Delivery Order level
132-40 / 132-40STLOC	Negotiated at Delivery Order level
132-51 / 132-5STLOC	Negotiated at Delivery Order level

SPECIAL ITEM NUMBER	EXPEDITED DELIVERY TIME (Days ARO)
132-32 / 132-32STLOC	Negotiated at Delivery Order level
132-40 / 132-40STLOC	Negotiated at Delivery Order level
132-51 / 132-5STLOC	Negotiated at Delivery Order level

SPECIAL ITEM NUMBER	OVERNIGHT AND 2-DAY DELIVERY TIME (Days ARO)
132-32 / 132-32STLOC	Negotiated at Delivery Order level
132-34 / 132-34STLOC	Negotiated at Delivery Order level
132-51 / 132-5STLOC	Negotiated at Delivery Order level

- b. URGENT REQUIREMENTS: When the Federal Supply Schedule contract delivery period does not meet the bona fide urgent delivery requirements of an ordering activity, ordering activities are encouraged, if time permits, to contact the Contractor for the purpose of obtaining accelerated delivery. The Contractor shall reply to the inquiry within 3 workdays after receipt. (Telephonic replies shall be confirmed by the Contractor in writing.) If the Contractor offers an accelerated delivery time acceptable to the ordering activity, any order(s) placed pursuant to the agreed upon accelerated delivery time frame shall be delivered within this shorter delivery time and in accordance with all other terms and conditions of the contract.

- c. i. SIN 132-54 and SIN 132-55, ACCELERATED SERVICE DELIVERY (7 calendar days or less): the time required for COMSATCOM services to be available after order award. Under Accelerated Service Task Orders, service acceptance testing, unless otherwise required by the satellite provider or host nation, shall be deferred until Ordering Activity operations permit.

- ii. SIN 132-54 and SIN 132-55, TIME-CRITICAL DELIVERY (4 hours or less): the time required for COMSATCOM services to be available after order award. Under Time-Critical Task Orders, service acceptance testing unless otherwise required by the satellite provider or host nation shall be deferred until Ordering Activity operations permit. Time-Critical Delivery shall be predicated on the availability of COMSATCOM transponder capacity (contracted bandwidth and power, pre-arranged Host Nation Agreements, frequency clearance) or COMSATCOM subscription services (bandwidth, terminals, network resources, etc.).

- iii. For SIN 132-54 and SIN 132-55, EXTENDED SERVICE DELIVERY TIMES: the time required under extenuating circumstances for COMSATCOM services to be available after order award. Such extenuating circumstances may include extended time required

for host nation agreements or landing rights, or other time intensive service delivery requirements as defined in the individual requirement. Any such extended delivery times will be negotiated between the Ordering Activity and Contractor.

7. DISCOUNTS: Prices shown are NET Prices; Basic Discounts have been deducted.

- a. Prompt Payment: **0% - Net 30 Days** from receipt of invoice or date of acceptance, whichever is later.
- b. Quantity: **None Offered**
- c. Dollar Volume: **None Offered**
- d. Other Special Discounts: **None Offered**

8. TRADE AGREEMENTS ACT OF 1979, as amended

All items are U.S. made end products, designated country end products, Caribbean Basin country end products, Canadian end products, or Mexican end products as defined in the Trade Agreements Act of 1979, as amended.

9. STATEMENT CONCERNING AVAILABILITY OF EXPORT PACKING: *Not Applicable*

10. SMALL REQUIREMENTS

The minimum dollar value of orders to be issued is **\$100.00**.

11. MAXIMUM ORDER (All dollar amounts are exclusive of any discount for prompt payment.)

- a. The Maximum Order value for the following Special Item Numbers (SINs) is **\$500,000**:
 - Special Item Number 132-32 – Term Software Licenses
 - Special Item Number 132-40 – Cloud Computing Services
 - Special Item Number 132-52 – Information Technology Professional Services

12. ORDERING PROCEEDURES FOR FEDERAL SUPPLY SCHEDULE CONTRACTS

Ordering activities shall use the ordering procedures of Federal Acquisition Regulation (FAR) 8.405 when placing an order or establishing a BPA for supplies or services. These procedures apply to all schedules.

- a. FAR 8.405-1 Ordering procedures for supplies, and services not requiring a statement of work.
- b. FAR 8.405-2 Ordering procedures for services requiring a statement of work.

13. FEDERAL INFORMATION TECHNOLOGY/TELECOMMUNICATION STANDARDS REQUIREMENTS:

Ordering activities acquiring products from this Schedule must comply with the provisions of the Federal Standards Program, as appropriate (reference: NIST Federal Standards Index). Inquiries to determine whether or not specific products listed herein comply with Federal Information Processing Standards (FIPS) or Federal Telecommunication Standards (FED-STDS), which are cited by ordering activities, shall be responded to promptly by the Contractor.

13.1 FEDERAL INFORMATION PROCESSING STANDARDS PUBLICATIONS (FIPS PUBS):

Information Technology products under this Schedule that do not conform to Federal Information Processing Standards (FIPS) should not be acquired unless a waiver has been granted in accordance with the applicable "FIPS Publication." Federal Information Processing Standards Publications (FIPS PUBS) are issued by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), pursuant to National Security Act. Information concerning their availability and applicability should be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161. FIPS PUBS include voluntary standards when these are adopted for Federal use. Individual orders for FIPS PUBS should be referred to the NTIS Sales Office, and orders for subscription service should be referred to the NTIS Subscription Officer, both at the above address, or telephone number (703) 487-4650.

13.2 FEDERAL TELECOMMUNICATION STANDARDS (FED-STDS):

Telecommunication products under this Schedule that do not conform to Federal Telecommunication Standards (FED-STDS) should not be acquired unless a waiver has been granted in accordance with the applicable "FED-STD." Federal Telecommunication

Standards are issued by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), pursuant to National Security Act. Ordering information and information concerning the availability of FED-STDS should be obtained from the GSA, Federal Acquisition Service, Specification Section, 470 East L'Enfant Plaza, Suite 8100, SW, Washington, DC 20407, telephone number (202) 619-8925. Please include a self-addressed mailing label when requesting information by mail. Information concerning their applicability can be obtained by writing or calling the U.S. Department of Commerce, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone number (301) 975-2833.

14. CONTRACTOR TASKS / SPECIAL REQUIREMENTS (C-FSS-370) (NOV 2003)

- (a) Security Clearances: The Contractor may be required to obtain/possess varying levels of security clearances in the performance of orders issued under this contract. All costs associated with obtaining/possessing such security clearances should be factored into the price offered under the Multiple Award Schedule.
- (b) Travel: The Contractor may be required to travel in performance of orders issued under this contract. Allowable travel and per diem charges are governed by Pub. L. 99-234 and FAR Part 31, and are reimbursable by the ordering agency or can be priced as a fixed price item on orders placed under the Multiple Award Schedule. Travel in performance of a task order will only be reimbursable to the extent authorized by the ordering agency. The Industrial Funding Fee does NOT apply to travel and per diem charges.
- (c) Certifications, Licenses and Accreditations: As a commercial practice, the Contractor may be required to obtain/possess any variety of certifications, licenses and accreditations for specific FSC/service code classifications offered. All costs associated with obtaining/possessing such certifications, licenses and accreditations should be factored into the price offered under the Multiple Award Schedule program.
- (d) Insurance: As a commercial practice, the Contractor may be required to obtain/possess insurance coverage for specific FSC/service code classifications offered. All costs associated with obtaining/possessing such insurance should be factored into the price offered under the Multiple Award Schedule program.
- (e) Personnel: The Contractor may be required to provide key personnel, resumes or skill category descriptions in the performance of orders issued under this contract. Ordering activities may require agency approval of additions or replacements to key personnel.
- (f) Organizational Conflicts of Interest: Where there may be an organizational conflict of interest as determined by the ordering agency, the Contractor's participation in such order may be restricted in accordance with FAR Part 9.5.
- (g) Documentation/Standards: The Contractor may be requested to provide products or services in accordance with rules, regulations, OMB orders, standards and documentation as specified by the agency's order.
- (h) Data/Deliverable Requirements: Any required data/deliverables at the ordering level will be as specified or negotiated in the agency's order.
- (i) Government-Furnished Property: As specified by the agency's order, the Government may provide property, equipment, materials or resources as necessary.
- (j) Availability of Funds: Many Government agencies' operating funds are appropriated for a specific fiscal year. Funds may not be presently available for any orders placed under the contract or any option year. The Government's obligation on orders placed under this contract is contingent upon the availability of appropriated funds from which payment for ordering purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are available to the ordering Contracting Officer.
- (k) Overtime: For professional services, the labor rates in the Schedule should not vary by virtue of the Contractor having worked overtime. For services applicable to the Service Contract Act (as identified in the Schedule), the labor rates in the Schedule will vary as governed by labor laws (usually assessed a time and a half of the labor rate).

15. CONTRACT ADMINISTRATION FOR ORDERING ACTIVITIES: Any ordering activity, with respect to any one or more delivery orders placed by it under this contract, may exercise the same rights of termination as might the GSA Contracting Officer under provisions of FAR 52.212-4, paragraphs (l) Termination for the ordering activity's convenience, and (m) Termination for Cause (See 52.212-4)

16. GSA ADVANTAGE!

GSA Advantage! is an on-line, interactive electronic information and ordering system that provides online access to vendors' schedule prices with ordering information. GSA Advantage! will allow the user to perform various searches across all contracts including, but not limited to:

- (1) Manufacturer;
- (2) Manufacturer's Part Number; and
- (3) Product categories.

Agencies can browse GSA Advantage! by accessing the Internet World Wide Web utilizing a browser (ex.: NetScape). The Internet address is <http://www.gsadvantage.gsa.gov>.

17. PURCHASE OF OPEN MARKET ITEMS

NOTE: Open Market Items are also known as incidental items, noncontract items, non-Schedule items, and items not on a Federal Supply Schedule contract. Ordering Activities procuring open market items must follow FAR 8.402(f).

For administrative convenience, an ordering activity contracting officer may add items not on the Federal Supply Multiple Award Schedule (MAS) -- referred to as open market items -- to a Federal Supply Schedule blanket purchase agreement (BPA) or an individual task or delivery order, **only if-**

- 1) All applicable acquisition regulations pertaining to the purchase of the items not on the Federal Supply Schedule have been followed (e.g., publicizing (Part 5), competition requirements (Part 6), acquisition of commercial items (Part 12), contracting methods (Parts 13, 14, and 15), and small business programs (Part 19));
- 2) The ordering activity contracting officer has determined the price for the items not on the Federal Supply Schedule is fair and reasonable;
- 3) The items are clearly labeled on the order as items not on the Federal Supply Schedule; and
- 4) All clauses applicable to items not on the Federal Supply Schedule are included in the order.

18. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS

a. For the purpose of this contract, commitments, warranties and representations include, in addition to those agreed to for the entire schedule contract:

- 1) Time of delivery/installation quotations for individual orders;
- 2) Technical representations and/or warranties of products concerning performance, total system performance and/or configuration, physical, design and/or functional characteristics and capabilities of a product/equipment/service/software package submitted in response to requirements which result in orders under this schedule contract.
- 3) Any representations and/or warranties concerning the products made in any literature, description, drawings and/or specifications furnished by the Contractor.

b. The above is not intended to encompass items not currently covered by the GSA Schedule contract.

c. The maintenance/repair service provided is the standard commercial terms and conditions for the type of products and/or services awarded.

19. OVERSEAS ACTIVITIES

The terms and conditions of this contract shall apply to all orders for installation, maintenance and repair of equipment in areas listed in the pricelist outside the 48 contiguous states and the District of Columbia, except as indicated:

Not Applicable

Upon request of the Contractor, the ordering activity may provide the Contractor with logistics support, as available, in accordance with all applicable ordering activity regulations. Such ordering activity support will be provided on a reimbursable basis, and will only be provided to the Contractor's technical personnel whose services are exclusively required for the fulfillment of the terms and conditions of this contract.

20. BLANKET PURCHASE AGREEMENTS (BPAs)

The use of BPAs under any schedule contract to fill repetitive needs for supplies or services is allowable. BPAs may be established with one or more schedule contractors. The number of BPAs to be established is within the discretion of the ordering activity establishing the BPA and should be based on a strategy that is expected to maximize the effectiveness of the BPA(s). Ordering activities shall follow FAR 8.405-3 when creating and implementing BPA(s).

21. CONTRACTOR TEAM ARRANGEMENTS

Contractors participating in contractor team arrangements must abide by all terms and conditions of their respective contracts. This includes compliance with Clauses 552.238-74, Industrial Funding Fee and Sales Reporting, i.e., each contractor (team member) must report sales and remit the IFF for all products and services provided under its individual contract.

22. INSTALLATION, DEINSTALLATION, REINSTALLATION

The Davis-Bacon Act (40 U.S.C. 276a-276a-7) provides that contracts in excess of \$2,000 to which the United States or the District of Columbia is a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works with the United States, shall contain a clause that no laborer or mechanic employed directly upon the site of the work shall receive less than the prevailing wage rates as determined by the Secretary of Labor. The requirements of the Davis-Bacon Act do not apply if the construction work is incidental to the furnishing of supplies, equipment, or services. For example, the requirements do not apply to simple installation or alteration of a public building or public work that is incidental to furnishing supplies or equipment under a supply contract. However, if the construction, alteration or repair is segregable and exceeds \$2,000, then the requirements of the Davis-Bacon Act applies.

The ordering activity issuing the task order against this contract will be responsible for proper administration and enforcement of the Federal labor standards covered by the Davis-Bacon Act. The proper Davis-Bacon wage determination will be issued by the ordering activity at the time a request for quotations is made for applicable construction classified installation, deinstallation, and reinstallation services under SIN 132-8 or 132-9.

23. SECTION 508 COMPLIANCE

I certify that in accordance with 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), FAR 39.2, and the Architectural and Transportation Barriers Compliance Board Electronic and Information Technology (EIT) Accessibility Standards (36 CFR 1194) General Services Administration (GSA), that all IT hardware/software/services are 508 compliant:

Yes

No

The offeror is required to submit with its offer a designated area on its website that outlines the Voluntary Product Accessibility Template (VPAT) or equivalent qualification, which ultimately becomes the Government Product Accessibility Template (GPAT). Section 508 compliance information on the supplies and services in this contract are available at the following website address (URL): **[Avoka's products are in compliance with Section 508. For detailed information about Section 508 compliance, please review \[www.avoka.com\]\(http://www.avoka.com\).](#)**

The EIT standard can be found at: www.Section508.gov/.

24. PRIME CONTRACTOR ORDERING FROM FEDERAL SUPPLY SCHEDULES

Prime Contractors (on cost reimbursement contracts) placing orders under Federal Supply Schedules, on behalf of an ordering activity, shall follow the terms of the applicable schedule and authorization and include with each order –

- (a) A copy of the authorization from the ordering activity with whom the contractor has the prime contract (unless a copy was previously furnished to the Federal Supply Schedule contractor); and
- (b) The following statement:

This order is placed under written authorization from _____ dated _____. In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule contract, the latter will govern.

25. INSURANCE—WORK ON A GOVERNMENT INSTALLATION (JAN 1997) (FAR 52.228-5)

- (a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.
- (b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective—
 - (1) For such period as the laws of the State in which this contract is to be performed prescribe; or
 - (2) Until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.
- (c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

26. SOFTWARE INTEROPERABILITY.

Contractors are encouraged to identify within their software items any component interfaces that support open standard interoperability. An item's interface may be identified as interoperable on the basis of participation in a Government agency-sponsored program or in an independent organization program. Interfaces may be identified by reference to an interface registered in the component registry located at <http://www.core.gov>.

27. ADVANCE PAYMENTS

A payment under this contract to provide a service or deliver an article for the United States Government may not be more than the value of the service already provided or the article already delivered. Advance or pre-payment is not authorized or allowed under this contract. (31 U.S.C. 3324)

**TERMS AND CONDITIONS APPLICABLE TO TERM SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-32) OF
GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE**

1. INSPECTION/ACCEPTANCE

The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The ordering activity reserves the right to inspect or test any software that has been tendered for acceptance. The ordering activity may require repair or replacement of nonconforming software at no increase in contract price. The ordering activity must exercise its postacceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the software, unless the change is due to the defect in the software.

2. ENTERPRISE USER LICENSE AGREEMENTS REQUIREMENTS (EULA)

The Contractor shall provide all Enterprise User License Agreements in an editable Microsoft Office (Word) format.

The GSA-negotiated Avoka End User License Agreement and Master Supply Agreement are included at the end of this pricelist.

3. GUARANTEE/WARRANTY

a. Unless specified otherwise in this contract, the Contractor's standard commercial guarantee/warranty as stated in the contract's commercial pricelist will apply to this contract.

Licensee understands that Avoka provides no assurance that Licensee's network or software will operate with the Software. In addition, any change in the operating system or other software or configuration of Licensee's network may affect the performance and operation of the Software. Accordingly, Avoka shall have no liability, and Avoka makes no warranty, with respect to the performance of the Software (a) when used on any computer network or any portion thereof, (b) when used with third party software, or (c) in combination with third party software or hardware.

Avoka warrants that (a) the software will, for a period of ninety (90) days from the date of licensee's receipt, perform substantially in accordance with Avoka's written materials accompanying it, and (b) any support services provided by Avoka shall be substantially as described in applicable written materials provided to licensee by Avoka.

Except as expressly set forth in the foregoing, the Software and Documentation is provided "as is" without warranty of any kind, either express or implied including, without limitation, the implied warranties of merchantability, fitness for a particular purpose, title, and noninfringement, or any warranties arising out of conduct or trade practice. Licensee assumes full responsibility for the selection of any Software component or Software suite. No representations or other affirmation of fact, oral or written, including, without limitation, statements regarding suitability, or performance, whether made by Avoka's employees, representatives, licensees, or otherwise, which is not contained in this License, shall be deemed to be a warranty by Avoka for any purpose or give rise to any liability of Avoka whatsoever. Avoka does not warrant that the Software is error-free or that it will operate with Licensee's computer network without any impairment of the Software or Licensee's computer network or other software. Avoka also disclaims any express or implied warranty concerning the Support Services. Neither Avoka nor any of Avoka's suppliers shall be liable to Licensee or any third party for any defects in the Software or Documentation. Avoka will not be liable to Licensee for any lost profits, lost savings, loss of use, or other special, incidental, or consequential damages arising in tort, contract, or otherwise, or for any claim by any other party, arising out of the use of or inability to use the Software even if Avoka has been advised of the possibility of such damages. Avoka's liability to Licensee in any event shall not exceed the amount of fees paid to Avoka with respect to this License. The fees charged by Avoka are in consideration of the disclaimers and limitations of liability set forth in this License, and Avoka would not and does not offer this License without such disclaimers and limitations of liability.

The foregoing exclusion / limitation of liability shall not apply (1) to personal injury or death resulting from Avoka's negligence; (2) for fraud; (3) for any other matter for which liability cannot be excluded by law, or (4) express remedies provided under any FAR, GSAR, or Schedule 70 solicitation clauses incorporated into the GSA Schedule 70 contract.

b. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract. If no implied warranties are given, an express warranty of at least 60 days must be given in accordance with FAR 12.404(b)(2)

c. Limitation of Liability. Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the ordering activity for consequential damages resulting from any defect or deficiencies in accepted items.

4. TECHNICAL SERVICES

The Contractor will provide technical support on a time and materials basis. A specific amount of hours for support services will be bought in bulk when time for the annual renewal or ad-hoc as needed. The exact number of hours will be determined based on level of support required.

5. SOFTWARE MAINTENANCE

a. Software maintenance as it is defined: (select software maintenance type) :

1. Software Maintenance as a Product (SIN 132-32)

Software Maintenance as a Product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It also includes access to on-line help libraries and FAQs (Frequently Asked Questions).

The following is included in Software Maintenance as a Product:

- Access to new releases and bug fixes.
- A Resolution of Errors in the Product that are not caused by client scripting, client configuration or use of the product outside of its intended scope. Errors that cannot be reproduced on the Reference implementation for the target product version are not covered under Product support.
- Access to Avoka's support portal and the ability to raise incidents.
- Documentation of APIs and product features for all supported product version.
- Provide Product installers and installation guides for On-premise installation clients.

Software maintenance as a Product does NOT include the creation, design, implementation, integration, etc. of a software package. These examples are considered software maintenance as a service.

Software Maintenance as a Product is billed at the time of purchase.

2. Software Maintenance as a Service (SIN 132-34)

Software maintenance as a service creates, designs, implements, and/or integrates customized changes to software that solve one or more problems and is not included with the price of the software. Software maintenance as a service includes person-to-person communications regardless of the medium used to communicate: telephone support, on-line technical support, customized support, and/or technical expertise which are charged commercially. Software maintenance as a service is billed in arrears in accordance with 31 U.S.C. 3324.

Software maintenance as a service is billed in arrears in accordance with 31 U.S.C. 3324.

b. Invoices for Software Maintenance as a Service shall be submitted by the Contractor on a monthly basis, after the completion of such period. Maintenance charges must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

6. PERIODS OF TERM LICENSES (SIN 132-32) AND MAINTENANCE (SIN 132-34)

a. The Contractor shall honor orders for periods for the duration of the contract period or a lesser period of time.

b. Term licenses and/or maintenance may be discontinued by the ordering activity on thirty (30) calendar days written notice to the Contractor.

c. Annual Funding. When annually appropriated funds are cited on an order for term licenses and/or maintenance, the period of the term licenses and/or maintenance shall automatically expire on September 30 of the contract period, or at the end of the contract period, whichever occurs first. Renewal of the term licenses and/or maintenance orders citing the new appropriation shall be required, if the term licenses and/or maintenance is to be continued during any remainder of the contract period.

d. Cross-Year Funding Within Contract Period. Where an ordering activity's specific appropriation authority provides for funds in excess of a 12 month (fiscal year) period, the ordering activity may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years.

e. Ordering activities should notify the Contractor in writing thirty (30) calendar days prior to the expiration of an order, if the term licenses and/or maintenance is to be terminated at that time. Orders for the continuation of term licenses and/or maintenance will be required if the term licenses and/or maintenance is to be continued during the subsequent period.

7. CONVERSION FROM TERM LICENSE TO PERPETUAL LICENSE (N/A)

a. The ordering activity may convert term licenses to perpetual licenses for any or all software at any time following acceptance of software. At the request of the ordering activity the Contractor shall furnish, within ten (10) calendar days, for each software product that is contemplated for conversion, the total amount of conversion credits which have accrued while the software was on a term license and the date of the last update or enhancement.

b. Conversion credits which are provided shall, within the limits specified, continue to accrue from one contract period to the next, provided the software remains on a term license within the ordering activity.

c. The term license for each software product shall be discontinued on the day immediately preceding the effective date of conversion from a term license to a perpetual license.

d. The price the ordering activity shall pay will be the perpetual license price that prevailed at the time such software was initially ordered under a term license, or the perpetual license price prevailing at the time of conversion from a term license to a perpetual license, whichever is the less, minus an amount equal to _____% of all term license payments during the period that the software was under a term license within the ordering activity.

8. TERM LICENSE CESSATION (N/A)

a. After a software product has been on a continuous term license for a period of _____ * months, a fully paid-up, non-exclusive, perpetual license for the software product shall automatically accrue to the ordering activity. The period of continuous term license for automatic accrual of a fully paid-up perpetual license does not have to be achieved during a particular fiscal year; it is a written Contractor commitment which continues to be available for software that is initially ordered under this contract, until a fully paid-up perpetual license accrues to the ordering activity. However, should the term license of the software be discontinued before the specified period of the continuous term license has been satisfied, the perpetual license accrual shall be forfeited.

b. The Contractor agrees to provide updates and maintenance service for the software after a perpetual license has accrued, at the prices and terms of Special Item Number 132-34, if the licensee elects to order such services. Title to the software shall remain with the Contractor.

9. UTILIZATION LIMITATIONS - (SIN 132-32 AND SIN 132-34)

a. Software acquisition is limited to commercial computer software defined in FAR Part 2.101.

b. When acquired by the ordering activity, commercial computer software and related documentation so legend shall be subject to the following:

(1) Title to and ownership of the software and documentation shall remain with the Contractor, unless otherwise specified.

(2) Software licenses are by site and by ordering activity. An ordering activity is defined as a cabinet level or independent ordering activity. The software may be used by any subdivision of the ordering activity (service, bureau, division, command, etc.) that has access to the site the software is placed at, even if the subdivision did not participate in the acquisition of the software. Further, the software may be used on a sharing basis where multiple agencies have joint projects that can be satisfied by the use of the software placed at one ordering activity's site. This would allow other agencies access to one ordering activity's database. For ordering activity public domain databases, user agencies and third parties may use the computer program to enter, retrieve, analyze and present data. The user ordering activity will take appropriate action by instruction, agreement, or otherwise, to protect the Contractor's proprietary property with any third parties that are permitted access to the computer programs and documentation in connection with the user ordering activity's permitted use of the computer programs and documentation. For purposes of this section, all such permitted third parties shall be deemed agents of the user ordering activity.

(3) Except as is provided in paragraph 8.b(2) above, the ordering activity shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime Contractors, subcontractors and agents of the ordering activity who have the ordering activity's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed

software and documentation only in accordance with these restrictions. This provision does not limit the right of the ordering activity to use software, documentation, or information therein, which the ordering activity may already have or obtains without restrictions.

(4) The ordering activity shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred, or in cases of Disaster Recovery, the ordering activity has the right to transfer the software to another site if the ordering activity site for which it is acquired is deemed to be unsafe for ordering activity personnel; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; to transfer a copy of the software to another site for purposes of benchmarking new hardware and/or software; and to modify the software and documentation or combine it with other software, provided that the unmodified portions shall remain subject to these restrictions.

(5) "Commercial Computer Software" may be marked with the Contractor's standard commercial restricted rights legend, but the schedule contract and schedule pricelist, including this clause, "Utilization Limitations" are the only governing terms and conditions, and shall take precedence and supersede any different or additional terms and conditions included in the standard commercial legend.

10. SOFTWARE CONVERSIONS - (SIN 132-32)

Full monetary credit will be allowed to the ordering activity when conversion from one version of the software to another is made as the result of a change in operating system, or from one computer system to another. Under a term license (132-32), conversion credits which accrued while the earlier version was under a term license shall carry forward and remain available as conversion credits which may be applied towards the perpetual license price of the new version.

11. DESCRIPTIONS AND EQUIPMENT COMPATIBILITY

The Contractor shall include, in the schedule pricelist, a complete description of each software product and a list of equipment on which the software can be used. Also, included shall be a brief, introductory explanation of the modules and documentation which are offered.

Avoka Transact is provided as a fully hosted cloud service on Amazon Web Services (AWS). Transaction Manager can also be installed on premise. For on premise installations the following is required. Composer is always cloud hosted.

Software Requirements

Operating Systems

- Microsoft Windows Server 2012* or Windows Server 2008 R2 64 bit Edition on Intel x86-64
- CentOS Linux 6 on Intel x86-64
- Oracle Linux 6 (Unbreakable Enterprise Kernel) on Intel x86-64
- Red Hat Enterprise Linux Server AP 6 on Intel x86-64

Databases

- Microsoft SQL Server 2012, 2008
- Oracle Database 11g
- MySQL 5.6, 5.5, 5.1

Hardware Requirements

Transaction Manager runs best on the Intel x86-64 Xeon CPU architectures with high CPU performance. We recommend server virtualization such as VMware ESX to provide enable better hardware utilization and improve operational support.

Recommended specification for a server deployed with Avoka Transaction Manager (TM)

- Intel Xeon Processors (8 Cores) with 2.4 GHz or greater clock speed
- 8 GB of RAM
- 100 GB of disk storage. Please note SAN storage is not required for server nodes.

Recommended specification for a server deployed with Avoka Transaction Manager (TM) and Adobe LiveCycle (LC)

- Intel Xeon Processors (8 Cores) with 2.4 GHz or greater clock speed

- 12 GB of RAM
- 100 GB of disk storage. Please note SAN storage is not required for server nodes.

12. RIGHT-TO-COPY PRICING

Avoka does not offer Right-To-Copy pricing.

GSA SOFTWARE AND MAINTENANCE PRICELIST – SIN 132-32 / 132-32STLOC

SIN	Part Number	Product	Descriptions	GSA Price
132-32	AT4-PREM-AMZ-SE1	Avoka Transact On-Premise, Composer IDE at Amazon Hosted, Version 4x Standard	Includes all modules (Avoka Transact Composer Cloud/Hosted, Avoka Transaction Manager and Avoka Transact Integration Agent On-Premise).	\$38,891.69 / year
132-32	AT4-PREM-AMZ-EE1	Avoka Transact On-Premise, Composer IDE at Amazon Hosted, Version 4x Enterprise	Includes all modules (Avoka Transact Composer Cloud/Hosted, Avoka Transaction Manager and Avoka Transact Integration Agent On-Premise) plus High Availability and Disaster Recovery licenses.	\$75,838.79 / year
132-32	AT4-PREM-Standard	Avoka Transact On-Premise Version 4x Standard	Includes all modules (Avoka Transact Composer On-Premise, Avoka Transaction Manager and Avoka Transact Integration Agent On-Premise).	\$53,476.07 / year
132-32	AT4-PREM-Enterprise	Avoka Transact On-Premise Version 4x Enterprise	Includes all modules (Avoka Transact Composer On-Premise, Avoka Transaction Manager & Avoka Transact Integration Agent On-Premise) plus High Availability and Disaster Recovery licenses.	\$90,423.17 / year
132-32	AT4-PAYGT-OTHER	Avoka Transact Payment Gateway Version 4x Other	Requires active base annual subscription to Avoka Transact Enterprise Edition	\$48,614.61
132-32	AT4-PAYGT-PAYGOV	Avoka Transact Payment Gateway Version 4x pay.gov	Requires active base annual subscription to Avoka Transact Enterprise Edition	\$48,614.61

Transaction Pack Pricing

132-32	TX-4-TX-2	Avoka Transact Transaction Pack Type 1: 10,000 - 24,999 Transactions	Requires active base annual subscription to Avoka Transact Enterprise Edition	\$1.00 / transaction
132-32	TX-4-TX-3	Avoka Transact Transaction Pack Type 2: 25,000 - 99,999 Transactions	Requires active base annual subscription to Avoka Transact Enterprise Edition	\$0.73 / transaction
132-32	TX-4-TX-4	Avoka Transact Transaction Pack Type 3: 100,000 - 249,999 Transactions	Requires active base annual subscription to Avoka Transact Enterprise Edition	\$0.70 / transaction
132-32	TX-4-TX-5	Avoka Transact Transaction Pack Type 4: 250,000 - 499,999 Transactions	Requires active base annual subscription to Avoka Transact Enterprise Edition	\$0.69 / transaction
132-32	TX-4-TX-6	Avoka Transact Transaction Pack Type 5: 500,000 - 999,999 Transactions	Requires active base annual subscription to Avoka Transact Enterprise Edition	\$0.51 / transaction
132-32	TX-4-TX-7	Avoka Transact Transaction Pack Type 6: 1,000,000 - 1,999,999 Transactions	Requires active base annual subscription to Avoka Transact Enterprise Edition	\$0.34 / transaction



TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF CLOUD COMPUTING SERVICES (SPECIAL ITEM NUMBER 132-40 / 132-40STLOC)

1. SCOPE

The prices, terms and conditions stated under Special Item Number (SIN) 132-40 Cloud Computing Services apply exclusively to Cloud Computing Services within the scope of this Information Technology Schedule.

This SIN provides ordering activities with access to technical services that run in cloud environments and meet the NIST Definition of Cloud Computing Essential Characteristics. Services relating to or impinging on cloud that do not meet all NIST essential characteristics should be listed in other SINs.

The scope of this SIN is limited to cloud capabilities provided entirely as a service. Hardware, software and other artifacts supporting the physical construction of a private or other cloud are out of scope for this SIN. Currently, an Ordering Activity can procure the hardware and software needed to build on premise cloud functionality, through combining different services on other IT Schedule 70 SINs (e.g. 132-51).

Sub-categories in scope for this SIN are the three NIST Service Models: Software as a Service (SaaS), Platform as a Service (PaaS), and Infrastructure as a Service (IaaS). Offerors may optionally select a single sub-category that best fits a proposed cloud service offering. Only one sub-category may be selected per each proposed cloud service offering. Offerors may elect to submit multiple cloud service offerings, each with its own single sub-category. The selection of one of three sub-categories does not prevent Offerors from competing for orders under the other two sub-categories. See service model guidance for advice on sub-category selection.

Sub-category selection within this SIN is optional for any individual cloud service offering, and new cloud computing technologies that do not align with the aforementioned three sub-categories may be included without a sub-category selection so long as they comply with the essential characteristics of cloud computing as outlined by NIST.

See Table 1 for a representation of the scope and sub-categories.

Table 1: Cloud Computing Services SIN

SIN Description	Sub-Categories
<ul style="list-style-type: none"> ● Commercially available cloud computing services ● Meets the National Institute for Standards and Technology (NIST) definition of Cloud Computing essential characteristics ● Open to all deployment models (private, public, community or hybrid), vendors specify deployment models 	<ol style="list-style-type: none"> 1. Software as a Service (SaaS): Consumer uses provider’s applications on cloud infrastructure. Does not manage/control platform or infrastructure. Limited application level configuration may be available. 2. Platform as a Service (PaaS): Consumer deploys applications onto cloud platform service using provider-supplied tools. Has control over deployed applications and some limited platform configuration but does not manage the platform or infrastructure. 3. Infrastructure as a Service (IaaS): Consumer provisions computing resources. Has control over OS, storage, platform, deployed applications and some limited infrastructure configuration, but does not manage the infrastructure.

2. DESCRIPTION OF CLOUD COMPUTING SERVICES AND PRICING

a. Service Description Requirements for Listing Contractors

The description requirements below are in addition to the overall Schedule 70 evaluation criteria described in SCP-FSS-001, SCP-FSS-004 and other relevant publications.

Refer to overall Schedule 70 requirements for timelines related to description and other schedule updates, including but not limited to clauses 552.238-81 –section E and clause I-FSS-600.

Table 2 summarizes the additional Contractor-provided description requirements for services proposed under the Cloud Computing Services SIN. All mandatory description requirements must be complete, and adequate according to evaluation criteria.

In addition there is one "Optional" reporting descriptions which exists to provide convenient service selection by relevant criteria. Where provided, optional description requirements must be complete and adequate according to evaluation criteria:

- The NIST Service Model provides sub-categories for the Cloud SIN and is strongly encouraged, but not required. The Service Model based sub-categories provide this SIN with a structure to assist ordering activities in locating and comparing services of interest. Contractors may optionally select the single service model most closely corresponding to the specific service offering.
- If a sub-category is selected it will be evaluated with respect to the NIST Service Model definitions and guidelines in "Guidance for Contractors".

Table 2: Cloud Service Description Requirements

#	Description Requirement	Reporting Type	Instructions
1	Provide a brief written description of how the proposed cloud computing services satisfies each individual essential NIST Characteristic	Mandatory	The cloud service must be capable of satisfying each of the five NIST essential Characteristics as outlined in NIST Special Publication 800-145. See 'GUIDANCE FOR CONTRACTORS: NIST Essential Characteristics' below in this document for detailed overall direction, as well as guidance on inheriting essential characteristics.
2	Select NIST deployment models for the cloud computing service proposed.	Mandatory	Contractors must select at least one NIST deployment model as outlined in NIST Special Publication 800-145 describing how the proposed cloud computing service is deployed. Select multiple deployment models if the service is offered in more than one deployment model. See 'GUIDANCE FOR CONTRACTORS: NIST Deployment Model' below in this document for detailed direction on how to best categorize a service for the NIST deployment models.
3	Optionally select the most appropriate NIST service model that will be the designated sub-category, or may select no sub-category.	Optional	Contractor may select a single NIST Service model to sub-categorize the service as outlined in NIST Special Publication 800-145. Sub-category selection is optional but recommended. See 'GUIDANCE FOR CONTRACTORS: NIST Service Model' below in this document for detailed direction on how to best categorize a service for the NIST IaaS, PaaS, and SaaS service models.

b. Pricing of Cloud Computing Services

All current pricing requirements for Schedule 70, including provision SCP-FSS-001 (Section III Price Proposal), SCP-FSS-004 (Section III Price Proposal), and clause I-FSS-600 Contract Price Lists, apply. At the current time there is no provision for reducing or eliminating standard price list posting requirements to accommodate rapid cloud price fluctuations.

In addition to standard pricing requirements, all pricing models must have the core capability to meet the NIST Essential Cloud Characteristics, particularly with respect to on-demand self-service, while allowing alternate variations at the task order level at agency discretion, pursuant to the guidance on NIST Essential Characteristics.

3. RESPONSIBILITIES OF THE CONTRACTOR

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character.

a. Acceptance Testing

Any required Acceptance Test Plans and Procedures shall be negotiated by the Ordering Activity at task order level. The Contractor shall perform acceptance testing of the systems for Ordering Activity approval in accordance with the approved test procedures.

b. Training

If training is provided commercially the Contractor shall provide normal commercial installation, operation, maintenance, and engineering interface training on the system. Contractor is responsible for indicating if there are separate training charges.

c. Information Assurance/Security Requirements

The contractor shall meet information assurance/security requirements in accordance with the Ordering Activity requirements at the Task Order level.

d. Related Professional Services

The Contractor is responsible for working with the Ordering Activity to identify related professional services and any other services available on other SINs that may be associated with deploying a complete cloud solution. Any additional substantial and ongoing professional services related to the offering such as integration, migration, and other cloud professional services are out of scope for this SIN.

e. Performance of Cloud Computing Services

The Contractor shall respond to Ordering Activity requirements at the Task Order level with proposed capabilities to Ordering Activity performance specifications or indicate that only standard specifications are offered. In all cases the Contractor shall clearly indicate standard service levels, performance and scale capabilities.

The Contractor shall provide appropriate cloud computing services on the date and to the extent and scope agreed to by the Contractor and the Ordering Activity.

f. Reporting

The Contractor shall respond to Ordering Activity requirements and specify general reporting capabilities available for the Ordering Activity to verify performance, cost and availability.

In accordance with commercial practices, the Contractor may furnish the Ordering Activity/user with a monthly summary Ordering Activity report.

4. RESPONSIBILITIES OF THE ORDERING ACTIVITY

The Ordering Activity is responsible for indicating the cloud computing services requirements unique to the Ordering Activity. Additional requirements should not contradict existing SIN or IT Schedule 70 Terms and Conditions. Ordering Activities should include (as applicable) Terms & Conditions to address Pricing, Security, Data Ownership, Geographic Restrictions, Privacy, SLAs, etc.

Cloud services typically operate under a shared responsibility model, with some responsibilities assigned to the Cloud Service Provider (CSP), some assigned to the Ordering Activity, and others shared between the two. The distribution of responsibilities will vary between providers and across service models. Ordering activities should engage with CSPs to fully understand and evaluate the shared responsibility model proposed. Federal Risk and Authorization Management Program (FedRAMP) documentation will be helpful regarding the security aspects of shared responsibilities, but operational aspects may require additional discussion with the provider.

a. Ordering Activity Information Assurance/Security Requirements Guidance

- i. The Ordering Activity is responsible for ensuring to the maximum extent practicable that each requirement issued is in compliance with the Federal Information Security Management Act (FISMA) as applicable.
- ii. The Ordering Activity shall assign a required impact level for confidentiality, integrity and availability (CIA) prior to issuing the initial statement of work. The Contractor must be capable of meeting at least the minimum security requirements assigned against a low-impact information system in each CIA assessment area (per FIPS 200) and must detail the FISMA capabilities of the system in each of CIA assessment area.
- iii. Agency level FISMA certification, accreditation, and evaluation activities are the responsibility of the Ordering Activity. The Ordering Activity reserves the right to independently evaluate, audit, and verify the FISMA compliance for any proposed or awarded Cloud Computing Services.
- iv. The Ordering Activity has final responsibility for assessing the FedRAMP status of the service, complying with and making a risk-based decision to grant an Authorization to Operate (ATO) for the cloud computing service, and continuous monitoring. A memorandum issued by the Office of Management and Budget (OMB) on Dec 8, 2011 outlines the responsibilities of Executive departments and agencies in the context of FedRAMP compliance.
- v. Ordering activities are responsible for determining any additional information assurance and security related requirements based on the nature of the application and relevant mandates.

b. Deployment Model

If a particular deployment model (Private, Public, Community, or Hybrid) is desired, Ordering Activities are responsible for identifying the desired model(s). Alternately, Ordering Activities could identify requirements and assess Contractor responses to determine the most appropriate deployment model(s).

c. Delivery Schedule

The Ordering Activity shall specify the delivery schedule as part of the initial requirement. The Delivery Schedule options are found in *Information for Ordering Activities Applicable to All Special Item Numbers*.

d. Interoperability

Ordering Activities are responsible for identifying interoperability requirements. Ordering Activities should clearly delineate requirements for API implementation and standards conformance.

e. Performance of Cloud Computing Services

The Ordering Activity should clearly indicate any custom minimum service levels, performance and scale requirements as part of the initial requirement.

f. Reporting

The Ordering Activity should clearly indicate any cost, performance or availability reporting as part of the initial requirement.

g. Privacy

The Ordering Activity should specify the privacy characteristics of their service and engage with the Contractor to determine if the cloud service is capable of meeting Ordering Activity requirements. For example, a requirement could be requiring assurance that the service is capable of safeguarding Personally Identifiable Information (PII), in accordance with NIST SP 800-122 and OMB memos M-06-16 and M-07-16. An Ordering Activity will determine what data elements constitute PII according to OMB Policy, NIST Guidance and Ordering Activity policy.

h. Accessibility

The Ordering Activity should specify the accessibility characteristics of their service and engage with the Contractor to determine the cloud service is capable of meeting Ordering Activity requirements. For example, a requirement could require assurance that the service is capable of providing accessibility based on Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

i. Geographic Requirements

Ordering activities are responsible for specifying any geographic requirements and engaging with the Contractor to determine that the cloud services offered have the capabilities to meet geographic requirements for all anticipated task orders. Common geographic concerns could include whether service data, processes and related artifacts can be confined on request to the United States and its territories, or the continental United States (CONUS).

j. Data Ownership and Retrieval and Intellectual Property

Intellectual property rights are not typically transferred in a cloud model. In general, CSPs retain ownership of the Intellectual Property (IP) underlying their services and the customer retains ownership of its intellectual property. The CSP gives the customer a license to use the cloud services for the duration of the contract without transferring rights. The government retains ownership of the IP and data they bring to the customized use of the service as spelled out in the FAR and related materials.

General considerations of data ownership and retrieval are covered under the terms of Schedule 70 and the FAR and other laws, ordinances, and regulations (Federal, State, City, or otherwise). Because of considerations arising from cloud shared responsibility models, ordering activities should engage with the Contractor to develop more cloud-specific understandings of the boundaries between data owned by the government and that owned by the cloud service provider, and the specific terms of data retrieval. In all cases, the Ordering Activity should enter into an agreement with a clear and enforceable understanding of the boundaries between government and cloud service provider data, and the form, format and mode of delivery for each kind of data belonging to the government.

The Ordering Activity should expect that the Contractor shall transfer data to the government at the government's request at any time, and in all cases when the service or order is terminated for any reason, by means, in formats and within a scope clearly understood at the initiation of the service. Example cases that might require clarification include status and mode of delivery for:

- Configuration information created by the government and affecting the government's use of the cloud provider's service.
- Virtual machine configurations created by the government but operating on the cloud provider's service.
- Profile, configuration and other metadata used to configure SaaS application services or PaaS platform services.

The key is to determine in advance the ownership of classes of data and the means by which Government owned data can be returned to the Government.

k. Service Location Distribution

The Ordering Activity should determine requirements for continuity of operations and performance and engage with the Contractor to ensure that cloud services have adequate service location distribution to meet anticipated requirements. Typical concerns include ensuring that:

- Physical locations underlying the cloud are numerous enough to provide continuity of operations and geographically separate enough to avoid an anticipated single point of failure within the scope of anticipated emergency events.
- Service endpoints for the cloud are able to meet anticipated performance requirements in terms of geographic proximity to service requestors.

Note that cloud providers may address concerns in the form of minimum distance between service locations, general regions where service locations are available, etc.

l. Related Professional Services

Ordering activities should engage with Contractors to discuss the availability of limited assistance with initial setup, training and access to the services that may be available through this SIN.

Any additional substantial and ongoing professional services related to the offering such as integration, migration, and other cloud professional services are out of scope for this SIN. Ordering activities should consult the appropriate GSA professional services schedule.

5. GUIDANCE FOR CONTRACTORS

This section offers guidance for interpreting the Contractor Description Requirements in Table 2, including the NIST essential cloud characteristics, service models and deployment models. This section is not a list of requirements.

Contractor-specific definitions of cloud computing characteristics and models or significant variances from the NIST essential characteristics or models are discouraged and will **not** be considered in the scope of this SIN or accepted in response to Factors for Evaluation. The only applicable cloud characteristics, service model/subcategories and deployment models for this SIN will be drawn from the NIST 800-145 special publication. Services qualifying for listing as cloud computing services under this SIN must substantially satisfy the essential characteristics of cloud computing as documented in the NIST Definition of Cloud Computing SP 800-145.

Contractors must select deployment models corresponding to each way the service can be deployed. Multiple deployment model designations for a single cloud service are permitted but at least one deployment model must be selected.

In addition, contractors submitting services for listing under this SIN are encouraged to select a sub-category for each service proposed under this SIN with respect to a single principal NIST cloud service model that most aptly characterizes the service. Service model categorization is optional.

Both service and deployment model designations must accord with NIST definitions. Guidance is offered in this document on making the most appropriate selection.

a. NIST Essential Characteristics

General Guidance

NIST's essential cloud characteristics provide a consistent metric for whether a service is eligible for inclusion in this SIN. It is understood that due to legislative, funding and other constraints that government entities cannot always leverage a cloud service to the extent that all NIST essential characteristics are commercially available. For the purposes of the Cloud SIN, meeting the NIST essential characteristics is determined by whether each essential capability of the commercial service is available for the service, whether or not the Ordering Activity actually requests or implements the capability. The guidance in Table 3 offers examples of how services might or might not be included based on the essential characteristics, and how the Contractor should interpret the characteristics in light of current government contracting processes.

Table 3: Guidance on Meeting NIST Essential Characteristics

Characteristic	Capability	Guidance
On-demand self-service	<ul style="list-style-type: none"> Ordering activities can directly provision services without requiring Contractor intervention. This characteristic is typically implemented via a service console or programming interface for provisioning 	<p>Government procurement guidance varies on how to implement on-demand provisioning at this time. Ordering activities may approach on-demand in a variety of ways, including “not-to-exceed” limits, or imposing monthly or annual payments on what are essentially on demand services.</p> <p>Services under this SIN must be capable of true on-demand self-service, and ordering activities and Contractors must negotiate how they implement on demand capabilities in practice at the task order level:</p> <ul style="list-style-type: none"> Ordering activities must specify their procurement approach and requirements for on-demand service Contractors must propose how they intend to meet the approach Contractors must certify that on-demand self-service is technically available for their services should procurement guidance become available.
Broad Network Access	<ul style="list-style-type: none"> Ordering activities are able to access services over standard agency networks Service can be accessed and consumed using standard devices such as browsers, tablets and mobile phones 	<ul style="list-style-type: none"> Broad network access must be available without significant qualification and in relation to the deployment model and security domain of the service Contractors must specify any ancillary activities, services or equipment required to access cloud services or integrate cloud with other cloud or non-cloud networks and services. For example a private cloud might require an Ordering Activity to purchase or provide a dedicated router, etc. which is acceptable but should be indicated by the Contractor.
Resource Pooling	<ul style="list-style-type: none"> Pooling distinguishes cloud services from offsite hosting. Ordering activities draw resources from a common pool maintained by the Contractor Resources may have general characteristics such as regional location 	<ul style="list-style-type: none"> The cloud service must draw from a pool of resources and provide an automated means for the Ordering Activity to dynamically allocate them. Manual allocation, e.g. manual operations at a physical server farm where Contractor staff configure servers in response to Ordering Activity requests, does not meet this requirement Similar concerns apply to software and platform models; automated provisioning from a pool is required Ordering activities may request dedicated physical hardware, software or platform resources to access a private cloud deployment service. However the provisioned cloud resources must be drawn from a common pool and automatically allocated on request.
Rapid Elasticity	<ul style="list-style-type: none"> Rapid provisioning and de-provisioning commensurate with demand 	<ul style="list-style-type: none"> Rapid elasticity is a specific demand-driven case of self-service Procurement guidance for on-demand self-service applies to rapid elasticity as well, i.e. rapid elasticity must be technically available but ordering activities and Contractors may mutually negotiate other contractual arrangements for procurement and payment. ‘Rapid’ should be understood as measured in minutes and hours, not days or weeks. Elastic capabilities by manual request, e.g. via a console operation or programming interface call, are required. Automated elasticity which is driven dynamically by system load, etc. is optional. Contractors must specify whether automated demand-driven elasticity is available and the general mechanisms that drive the capability.

Measured Service	<ul style="list-style-type: none"> Measured service should be understood as a reporting requirement that enables an Ordering Activity to control their use in cooperation with self service 	<ul style="list-style-type: none"> Procurement guidance for on-demand self-service applies to measured service as well, i.e. rapid elasticity must be technically available but ordering activities and Contractors may mutually designate other contractual arrangements. Regardless of specific contractual arrangements, reporting must indicate actual usage, be continuously available to the Ordering Activity, and provide meaningful metrics appropriate to the service measured Contractors must specify that measured service is available and the general sort of metrics and mechanisms available
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Inheriting Essential Characteristics

Cloud services may depend on other cloud services, and cloud service models such as PaaS and SaaS are able to inherit essential characteristics from other cloud services that support them. For example a PaaS platform service can inherit the broad network access made available by the IaaS service it runs on, and in such a situation would be fully compliant with the broad network access essential characteristic. Services inheriting essential characteristics must make the inherited characteristic fully available at their level of delivery to claim the relevant characteristic by inheritance.

Inheriting characteristics does not require the inheriting provider to directly bundle or integrate the inherited service, but it does require a reasonable measure of support and identification. For example, the Ordering Activity may acquire an IaaS service from “Provider A” and a PaaS service from “Provider B”. The PaaS service may inherit broad network access from “Provider A” but must identify and support the inherited service as an acceptable IaaS provider.

Assessing Broad Network Access

Typically broad network access for public deployment models implies high bandwidth access from the public internet for authorized users. In a private cloud deployment internet access might be considered broad access, as might be access through a dedicated shared high bandwidth network connection from the Ordering Activity, in accord with the private nature of the deployment model.

Resource Pooling and Private Cloud

All cloud resource pools are finite, and only give the appearance of infinite resources when sufficiently large, as is sometimes the case with a public cloud. The resource pool supporting a private cloud is typically smaller with more visible limits. A finite pool of resources purchased as a private cloud service qualifies as resource pooling so long as the resources within the pool can be dynamically allocated to the ultimate users of the resource, even though the pool itself appears finite to the Ordering Activity that procures access to the pool as a source of dynamic service allocation.

b. NIST Service Model

The Contractor may optionally document the service model of cloud computing (e.g. IaaS, PaaS, SaaS, or a combination thereof, that most closely describes their offering, using the definitions in The NIST Definition of Cloud Computing SP 800-145. The following guidance is offered for the proper selection of service models.

NIST’s service models provide this SIN with a set of consistent sub-categories to assist ordering activities in locating and comparing services of interest. Service model is primarily concerned with the nature of the service offered and the staff and activities most likely to interact with the service. Contractors should select a single service model most closely corresponding to their proposed service based on the guidance below. It is understood that cloud services can technically incorporate multiple service models and the intent is to provide the single best categorization of the service.

Contractors should take care to select the NIST service model most closely corresponding to each service offered. Contractors should not invent, proliferate or select multiple cloud service model sub-categories to distinguish their offerings, because ad-hoc categorization prevents consumers from comparing similar offerings. Instead vendors should make full use of the existing NIST categories to the fullest extent possible.

For example, in this SIN an offering commercially marketed by a Contractor as “Storage as a Service” would be properly characterized as Infrastructure as a Service (IaaS), storage being a subset of infrastructure. Services commercially marketed as “LAMP as a Service” or “Database as a Service” would be properly characterized under this SIN as Platform as a Service (PaaS), as

they deliver two kinds of platform services. Services commercially marketed as “Travel Facilitation as a Service” or “Email as a Service” would be properly characterized as species of Software as a Service (SaaS) for this SIN. However, Contractors can and should include appropriate descriptions (include commercial marketing terms) of the service in the full descriptions of the service’s capabilities.

When choosing between equally plausible service model sub-categories, Contractors should consider several factors:

- 1) **Visibility to the Ordering Activity.** Service model sub-categories in this SIN exist to help Ordering Activities match their requirements with service characteristics. Contractors should select the most intuitive and appropriate service model from the point of view of an Ordering Activity.
- 2) **Primary Focus of the Service.** Services may offer a mix of capabilities that span service models in the strict technical sense. For example, a service may offer both IaaS capabilities for processing and storage, along with some PaaS capabilities for application deployment, or SaaS capabilities for specific applications. In a service mix situation the Contractor should select the service model that is their primary focus. Alternatively contractors may choose to submit multiple service offerings for the SIN, each optionally and separately subcategorized.
- 3) **Ordering Activity Role.** Contractors should consider the operational role of the Ordering Activity’s primary actual consumer or operator of the service. For example services most often consumed by system managers are likely to fit best as IaaS; services most often consumed by application deployers or developers as PaaS, and services most often consumed by business users as SaaS.
- 4) **Lowest Level of Configurability.** Contractors can consider IaaS, PaaS and SaaS as an ascending hierarchy of complexity, and select the model with the lowest level of available Ordering Activity interaction. As an example, virtual machines are an IaaS service often bundled with a range of operating systems, which are PaaS services. The Ordering Activity usually has access to configure the lower level IaaS service, and the overall service should be considered IaaS. In cases where the Ordering Activity cannot configure the speed, memory, network configuration, or any other aspect of the IaaS component, consider categorizing as a PaaS service.

Cloud management and cloud broker services should be categorized based on their own characteristics and not those of the other cloud services that are their targets. Management and broker services typically fit the SaaS service model, regardless of whether the services they manage are SaaS, PaaS or IaaS. Use Table 3 to determine which service model is appropriate for the cloud management or cloud broker services, or, alternately choose not to select a service model for the service.

The guidance in Table 3 offers examples of how services might be properly mapped to NIST service models and how a Contractor should interpret the service model sub-categories.

Table 3: Guidance on Mapping to NIST Service Models

Service Model	Guidance
Infrastructure as a Service (IaaS)	<p>Select an IaaS model for service based equivalents of hardware appliances such as virtual machines, storage devices, routers and other physical devices.</p> <ul style="list-style-type: none"> • IaaS services are typically consumed by system or device managers who would configure physical hardware in a non-cloud setting • The principal customer interaction with an IaaS service is provisioning then configuration, equivalent to procuring and then configuring a physical device. <p>Examples of IaaS services include virtual machines, object storage, disk block storage, network routers and firewalls, software defined networks.</p> <p>Gray areas include services that emulate or act as dedicated appliances and are directly used by applications, such as search appliances, security appliances, etc. To the extent that these services or their emulated devices provide direct capability to an application they might be better classified as Platform services (PaaS). To the extent that they resemble raw hardware and are consumed by other platform services they are better classified as IaaS.</p>
Platform as a Service (PaaS)	<p>Select a PaaS model for service based equivalents of complete or partial software platforms. For the purposes of this classification, consider a platform as a set of software services capable of deploying all or part of an application.</p> <ul style="list-style-type: none"> • A complete platform can deploy an entire application. Complete platforms can be proprietary or open source • Partial platforms can deploy a component of an application which combined with other

	<p>components make up the entire deployment</p> <ul style="list-style-type: none"> • PaaS services are typically consumed by application deployment staff whose responsibility is to take a completed agency application and cause it to run on the designated complete or partial platform service • The principal customer interaction with a PaaS service is deployment, equivalent to deploying an application or portion of an application on a software platform service. • A limited range of configuration options for the platform service may be available. <p>Examples of complete PaaS services include:</p> <ul style="list-style-type: none"> • A Linux/Apache/MySQL/PHP (LAMP) platform ready to deploy a customer PHP application, • A Windows .Net platform ready to deploy a .Net application, • A custom complete platform ready to develop and deploy an customer application in a proprietary language • A multiple capability platform ready to deploy an arbitrary customer application on a range of underlying software services. <p>The essential characteristic of a complete PaaS is defined by the customer’s ability to deploy a complete custom application directly on the platform.</p> <p>PaaS includes partial services as well as complete platform services. Illustrative examples of individual platform enablers or components include:</p> <ul style="list-style-type: none"> • A database service ready to deploy a customer’s tables, views and procedures, • A queuing service ready to deploy a customer’s message definitions • A security service ready to deploy a customer’s constraints and target applications for continuous monitoring <p>The essential characteristic of an individual PaaS component is the customer’s ability to deploy their unique structures and/or data onto the component for a partial platform function.</p> <p>Note that both the partial and complete PaaS examples all have two things in common:</p> <ul style="list-style-type: none"> • They are software services, which offer significant core functionality out of the box • They must be configured with customer data and structures to deliver results <p>As noted in IaaS, operating systems represent a grey area in that OS is definitely a platform service, but is typically bundled with IaaS infrastructure. If your service provides an OS but allows for interaction with infrastructure, please sub-categorize it as IaaS. If your service “hides” underlying infrastructure, consider it as PaaS.</p>
Software as a Service (SaaS)	<p>Select a SaaS model for service based equivalents of software applications.</p> <ul style="list-style-type: none"> • SaaS services are typically consumed by business or subject-matter staff who would interact directly with the application in a non-cloud setting • The principal customer interaction with a SaaS service is actual operation and consumption of the application services the SaaS service provides. <p>Some minor configuration may be available, but the scope of the configuration is limited to the scope and then the permissions of the configuring user. For example an agency manager might be able to configure some aspects of the application for their agency but not all agencies. An agency user might be able to configure some aspects for themselves but not everyone in their agency. Typically only the Contractor would be permitted to configure aspects of the software for all users.</p> <p>Examples of SaaS services include email systems, business systems of all sorts such as travel systems, inventory systems, etc., wiki’s, websites or content management systems, management applications that allow a customer to manage other cloud or non-cloud services, and in general any system where customers interact directly for a business purpose.</p> <p>Gray areas include services that customers use to configure other cloud services, such as cloud management software, cloud brokers, etc. In general these sorts of systems should be considered SaaS, per guidance in this document.</p>

c. Deployment Model

Deployment models (e.g. private, public, community, or hybrid) are not restricted at the SIN level and any specifications for a deployment model are the responsibility of the Ordering Activity.

Multiple deployment model selection is permitted, but at least one model must be selected. The guidance in Table 4 offers examples of how services might be properly mapped to NIST deployment models and how the Contractor should interpret the deployment model characteristics. Contractors should take care to select the range of NIST deployment models most closely corresponding to each service offered.

Note that the scope of this SIN does not include hardware or software components used to construct a cloud, only cloud capabilities delivered as a service, as noted in the Scope section.

Table 4: Guidance for Selecting a Deployment Model

Deployment Model	Guidance
Private Cloud	The service is provided exclusively for the benefit of a definable organization and its components; access from outside the organization is prohibited. The actual services may be provided by third parties, and may be physically located as required, but access is strictly defined by membership in the owning organization.
Public Cloud	The service is provided for general public use and can be accessed by any entity or organization willing to contract for it.
Community Cloud	The service is provided for the exclusive use of a community with a definable shared boundary such as a mission or interest. As with private cloud, the service may be in any suitable location and administered by a community member or a third party.
Hybrid Cloud	The service is composed of one or more of the other models. Typically hybrid models include some aspect of transition between the models that make them up, for example a private and public cloud might be designed as a hybrid cloud where events like increased load permit certain specified services in the private cloud to run in a public cloud for extra capacity, e.g. bursting.

FACTORS FOR EVALUATION FOR IT SCHEDULE 70 CLOUD COMPUTING SERVICES SIN

The following technical evaluation factor applies in addition to the standard Schedule 70 evaluation factors outlined in CI-FSS-152 ADDITIONAL EVALUATION FACTORS and related documents and applies solely to the Cloud Computing Services SIN. A template will be provided at the time of solicitation refresh to complete the requested documentation.

FACTOR - Cloud Computing Services Adherence to Essential Cloud Characteristics

Within a two page limitation for each cloud service submitted, provide a description of how the cloud computing service meets each of the five essential cloud computing characteristics as defined in described in National Institute of Standards and Technology (NIST) Special Publication 800-145 and subsequent versions of this publication. This standard specifies the definition of cloud computing for the use by Federal agencies. The cloud service must be capable of satisfying each of the five NIST essential Characteristics as follows:

- On-demand self-service
- Broad network access
- Resource Pooling
- Rapid Elasticity
- Measured Service

Refer to the 'Guidance for Contractors' section of the Terms & Conditions for the Cloud Computing Services SIN for guidance on meeting the NIST characteristics. For the purposes of the Cloud Computing Services SIN, meeting the NIST essential characteristics is concerned primarily with whether the underlying capability of the commercial service is available, whether or not an Ordering Activity actually requests or implements the capability.

FACTOR – Cloud Computing Services Deployment Model

For each cloud service submitted, provide a written description of how the proposed service meets the NIST definition of a particular deployment model (Public, Private, Community, or Hybrid), within a one half (1/2) page limitation for each designated deployment

model of each cloud service submitted. Multiple deployment model selection is permitted, but at least one model must be indicated.

Refer to the 'Guidance for Contractors' section of the Terms & Conditions for the Cloud Computing Services SIN for guidance on identifying the appropriate deployment model according to the NIST service model definitions.

FACTOR - Cloud Computing Services Service Model

For each cloud computing service proposed to be categorized under a specific sub-category (IaaS, PaaS or SaaS), provide a written description of how the proposed service meets the NIST definition of that service model, within a half (1/2) page limitation for each cloud service submitted.

Refer to the 'Guidance for Contractors' section of the Terms & Conditions for the Cloud Computing Services SIN for guidance on categorizing the service into a sub-category according to the NIST service model definitions.

Note that it is not mandatory to select a sub-category, and therefore this factor for evaluation applies ONLY to cloud services proposed to fall under a specific sub-category. If no sub-category is selected, this factor does not need to be addressed. The two other factors ('Adherence to Essential Cloud Characteristics' and 'Cloud Computing Services Deployment Model') apply to all cloud services.

The GSA-negotiated Avoka End User License Agreement and Master Supply Agreement are included at the end of this pricelist.

GSA CLOUD SOFTWARE PRICELIST – SIN 132-40 / 132-40STLOC

SIN	Part Number	Product	Descriptions	GSA Price
132-40	AT4-AMZ-SVR-SE1	Avoka Transact Amazon Hosted, Version 4x Standard	Includes all modules (Avoka Transact Composer Cloud/Hosted, Avoka Transaction Manager and Avoka Transact Integration Agent On-Premise).	\$38,891.69 / year
132-40	AT4-AMZ-SVR-EE1	Avoka Transact Amazon Hosted, Version 4x Enterprise	Includes all modules (Avoka Transact Composer Cloud/Hosted, Avoka Transaction Manager and Avoka Transact Integration Agent On-Premise) plus High Availability and Disaster Recovery licenses.	\$75,838.79 / year

**TERMS AND CONDITIONS APPLICABLE TO INFORMATION TECHNOLOGY (IT)
PROFESSIONAL SERVICES (SPECIAL ITEM NUMBER 132-51 / 132-51STLOC)**

1. SCOPE

- a. The prices, terms and conditions stated under Special Item Number 132-51 Information Technology Professional Services apply exclusively to IT Professional Services within the scope of this Information Technology Schedule.
- b. The Contractor shall provide services at the Contractor's facility and/or at the ordering activity location, as agreed to by the Contractor and the ordering activity.

2. PERFORMANCE INCENTIVES I-FSS-60 Performance Incentives (April 2000)

- a. Performance incentives may be agreed upon between the Contractor and the ordering activity on individual fixed price orders or Blanket Purchase Agreements under this contract.
- b. The ordering activity must establish a maximum performance incentive price for these services and/or total solutions on individual orders or Blanket Purchase Agreements.
- c. Incentives should be designed to relate results achieved by the contractor to specified targets. To the maximum extent practicable, ordering activities shall consider establishing incentives where performance is critical to the ordering activity's mission and incentives are likely to motivate the contractor. Incentives shall be based on objectively measurable tasks.

3. ORDER

- a. Agencies may use written orders, EDI orders, blanket purchase agreements, individual purchase orders, or task orders for ordering services under this contract. Blanket Purchase Agreements shall not extend beyond the end of the contract period; all services and delivery shall be made and the contract terms and conditions shall continue in effect until the completion of the order. Orders for tasks which extend beyond the fiscal year for which funds are available shall include FAR 52.232-19 (Deviation – May 2003) Availability of Funds for the Next Fiscal Year. The purchase order shall specify the availability of funds and the period for which funds are available.
- b. All task orders are subject to the terms and conditions of the contract. In the event of conflict between a task order and the contract, the contract will take precedence.

4. PERFORMANCE OF SERVICES

- a. The Contractor shall commence performance of services on the date agreed to by the Contractor and the ordering activity.
- b. The Contractor agrees to render services only during normal working hours, unless otherwise agreed to by the Contractor and the ordering activity.
- c. The ordering activity should include the criteria for satisfactory completion for each task in the Statement of Work or Delivery Order. Services shall be completed in a good and workmanlike manner.
- d. Any Contractor travel required in the performance of IT Services must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Established Federal Government per diem rates will apply to all Contractor travel. Contractors cannot use GSA city pair contracts.

5. STOP-WORK ORDER (FAR 52.242-15) (AUG 1989)

- (a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either-

- (1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if-

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

6. INSPECTION OF SERVICES

In accordance with FAR 52.212-4 CONTRACT TERMS AND CONDITIONS--COMMERCIAL ITEMS (MAR 2009) (DEVIATION I - FEB 2007) for Firm-Fixed Price orders and FAR 52.212-4 CONTRACT TERMS AND CONDITIONS 2 COMMERCIAL ITEMS (MAR 2009) (ALTERNATE I 2) OCT 2008) (DEVIATION I - FEB 2007) applies to Time-and-Materials and Labor-Hour Contracts orders placed under this contract.

7. RESPONSIBILITIES OF THE CONTRACTOR

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character. If the end product of a task order is software, then FAR 52.227-14 (Dec 2007) Rights in Data - General, may apply.

8. RESPONSIBILITIES OF THE ORDERING ACTIVITY

Subject to security regulations, the ordering activity shall permit Contractor access to all facilities necessary to perform the requisite IT Professional Services.

9. INDEPENDENT CONTRACTOR

All IT Professional Services performed by the Contractor under the terms of this contract shall be as an independent Contractor, and not as an agent or employee of the ordering activity.

10. ORGANIZATIONAL CONFLICTS OF INTEREST

a. Definitions.

"Contractor" means the person, firm, unincorporated association, joint venture, partnership, or corporation that is a party to this contract.

"Contractor and its affiliates" and "Contractor or its affiliates" refers to the Contractor, its chief executives, directors, officers, subsidiaries, affiliates, subcontractors at any tier, and consultants and any joint venture involving the Contractor, any entity into or with which the Contractor subsequently merges or affiliates, or any other successor or assignee of the Contractor.

An "Organizational conflict of interest" exists when the nature of the work to be performed under a proposed ordering activity contract, without some restriction on ordering activities by the Contractor and its affiliates, may either (i) result in an unfair competitive advantage to the Contractor or its affiliates or (ii) impair the Contractor's or its affiliates' objectivity in performing contract work.

b. To avoid an organizational or financial conflict of interest and to avoid prejudicing the best interests of the ordering activity, ordering activities may place restrictions on the Contractors, its affiliates, chief executives, directors, subsidiaries and subcontractors at any tier when placing orders against schedule contracts. Such restrictions shall be consistent with FAR 9.505 and shall be designed to avoid, neutralize, or mitigate organizational conflicts of interest that might otherwise exist in situations related to individual orders placed against the schedule contract. Examples of situations, which may require restrictions, are provided at FAR 9.508.

11. INVOICES

The Contractor, upon completion of the work ordered, shall submit invoices for IT Professional services. Progress payments may be authorized by the ordering activity on individual orders if appropriate. Progress payments shall be based upon completion of defined milestones or interim products. Invoices shall be submitted monthly for recurring services performed during the preceding month.

12. PAYMENTS

For firm-fixed price orders the ordering activity shall pay the Contractor, upon submission of proper invoices or vouchers, the prices stipulated in this contract for service rendered and accepted. Progress payments shall be made only when authorized by the order. For time-and-materials orders, the Payments under Time-and-Materials and Labor-Hour Contracts at FAR 52.212-4 (MAR 2009) (ALTERNATE 1 – OCT 2008) (DEVIATION 1 – FEB 2007) applies to time-and-materials orders placed under this contract. For labor-hour orders, the Payment under Time-and-Materials and Labor-Hour Contracts at FAR 52.212-4 (MAR 2009) (ALTERNATE 1 – OCT 2008) (DEVIATION 1 – FEB 2007) applies to labor-hour orders placed under this contract. 52.216-31 (Feb 2007) Time-and-Materials/Labor-Hour Proposal Requirements – Commercial Item Acquisition As prescribed in 16.601(e)(3), insert the following provision:

(a) The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.
(b) The offeror must specify fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit. The offeror must specify whether the fixed hourly rate for each labor category applies to labor performed by –

- (1) The offeror;
- (2) Subcontractors; and/or
- (3) Divisions, subsidiaries, or affiliates of the offeror under a common control.

13. RESUMES

Resumes shall be provided to the GSA Contracting Officer or the user ordering activity upon request.

14. INCIDENTAL SUPPORT COSTS

Incidental support costs are available outside the scope of this contract. The costs will be negotiated separately with the ordering activity in accordance with the guidelines set forth in the FAR.

15. APPROVAL OF SUBCONTRACTS

The ordering activity may require that the Contractor receive, from the ordering activity's Contracting Officer, written consent before placing any subcontract for furnishing any of the work called for in a task order.

16. DESCRIPTION OF IT PROFESSIONAL SERVICES AND PRICING

a. The Contractor shall provide a description of each type of IT Service offered under Special Item Numbers 132-51 IT Professional Services should be presented in the same manner as the Contractor sells to its commercial and other ordering activity customers. If the Contractor is proposing hourly rates, a description of all corresponding commercial job titles (labor categories) for those individuals who will perform the service should be provided.

b. Pricing for all IT Professional Services shall be in accordance with the Contractor's customary commercial practices; e.g., hourly rates, monthly rates, term rates, and/or fixed prices, minimum general experience and minimum education.

GSA IT PROFESSIONAL SERVICES PRICELIST – SIN 132-51 / 132-51STLOC

Avoka Consultant		\$194.46 / hr
Minimum Experience:	Five (5) years total in a related field. Must include a minimum of three (3) years experience with Avoka Transact and Avoka Certification	
Functional Responsibility:	Applies advanced business and/or technical expertise to assist with the defining, analyzing, validating and documenting complex customer processes and requirements. Provides advanced technical support and is involved in applying specialized knowledge to complex customer processes and requirements. Employs best practices for SmartForms development for the variety of use cases supported by our product. Experienced will all aspects of the Avoka Transact Product Suite including Transact Composer, Transaction Manager, and Transact Field App as well as front end UI/UX design, back end services and integration.	
Minimum Education:	Bachelors Degree (Preferred B.A. or B.S. in Computer Science, Engineering, Mathematics, Economics or Business) or High School Degree / GED and 5+ years experience in related field	

Senior Forms Developer		\$182.30 / hr
Minimum Experience:	Three (3) years total in a related field. Must include a minimum of two (2) years experience with Avoka Transact and Avoka Certification	
Functional Responsibility:	Assists clients in understanding and clarifying business requirements, analyzing, designing and developing electronic SmartForm solutions. Performs Java development to deliver customer solutions on top of the Avoka Transact product offering. Development work is done in Enterprise Java and related frameworks and tools (Eclipse, Maven, JUnit, Log4J, Spring, Groovy). Strong working knowledge of Adobe LiveCycle. Experienced will SmartForm Development within the Avoka Transact Product Suite including Transact Composer, Transaction Manager, and Transact Field App as well as front end UI/UX design, back end services and integration.	
Minimum Education:	Bachelors Degree (Preferred B.A. or B.S. in Computer Science, Engineering, Mathematics, Economics or Business) or High School Degree / GED and 5+ years experience in related field	

Forms Developer		\$121.54 / hr
Minimum Experience:	Entry-level position	
Functional Responsibility:	Assists clients in understanding and clarifying business requirements, analyzing, designing and developing electronic SmartForm solutions. Emphasis on new forms and enhancements to existing forms. Experienced will SmartForm Development within the Avoka Transact Product Suite including Transact Composer, Transaction Manager, and Transact Field App as well as front end UI/UX design.	
Minimum Education:	Bachelors Degree (Preferred B.A. or B.S. in Computer Science, Engineering, Mathematics, Economics or Business) or High School Degree / GED and 5+ years experience in related field	

Project Manager		\$194.46 / hr
Minimum Experience:	Five (5) years total in a related field.	
Functional Responsibility:	Possesses a thorough understanding of the process requirements and provide both technical and management oversight of the project. Responsible for customer satisfaction, serves as the single point of contact for interaction with the broader services team, compliance with the Statement of Work, project planning and management, resource allocation, and reporting. Experienced will all aspects of the Avoka Transact Product Suite including Transact Composer, Transaction Manager, and Transact Field App.	
Minimum Education:	Bachelors Degree and P.M.P. (Preferred B.A. or B.S. in Computer Science, Engineering, Mathematics, Economics or Business) or High School Degree / GED and 5+ years experience in related field	



Integration Developer		\$194.46 / hr
Minimum Experience:	Five (5) years total in a related field.	
Functional Responsibility:	Emphasis on integration middleware JavaEE skills, e.g., SOAP and REST Web Services, Spring Beans, Groovy scripts and JSON processing, Custom SSO integrations, integration to third party system WS APIs, integration to BPM engines, custom HTML/CSS for portlet web pages, POJos, XSLT transforms and XML processing, etc. Experienced with all aspects of the Avoka Transact Product Suite including Transact Composer, Transaction Manager, and Transact Field App as well as back end services and integration.	
Minimum Education:	Bachelors Degree (Preferred B.A. or B.S. in Computer Science, Engineering, Mathematics, Economics or Business) or High School Degree / GED and 5+ years experience in related field	

**USA COMMITMENT TO PROMOTE
SMALL BUSINESS PARTICIPATION
PROCUREMENT PROGRAMS**

PREAMBLE

Avoka USA, Inc. provides commercial products and services to ordering activities. We are committed to promoting participation of small, small disadvantaged and women-owned small businesses in our contracts. We pledge to provide opportunities to the small business community through reselling opportunities, mentor-protégé programs, joint ventures, teaming arrangements, and subcontracting.

COMMITMENT

To actively seek and partner with small businesses.

To identify, qualify, mentor and develop small, small disadvantaged and women-owned small businesses by purchasing from these businesses whenever practical.

To develop and promote company policy initiatives that demonstrate our support for awarding contracts and subcontracts to small business concerns.

To undertake significant efforts to determine the potential of small, small disadvantaged and women-owned small business to supply products and services to our company.

To insure procurement opportunities are designed to permit the maximum possible participation of small, small disadvantaged, and women-owned small businesses.

To attend business opportunity workshops, minority business enterprise seminars, trade fairs, procurement conferences, etc., to identify and increase small businesses with whom to partner.

To publicize in our marketing publications our interest in meeting small businesses that may be interested in subcontracting opportunities.

We signify our commitment to work in partnership with small, small disadvantaged and women-owned small businesses to promote and increase their participation in ordering activity contracts. To accelerate potential opportunities please contact:

Christopher Menard, Customer Success Manager

Phone: (303) 800-8551

Fax: (888) 290-8879

E-mail: cmenard@avoka.com

**BEST VALUE
BLANKET PURCHASE AGREEMENT
FEDERAL SUPPLY SCHEDULE**

(Insert Customer Name)

In the spirit of the Federal Acquisition Streamlining Act (ordering activity) and **Avoka USA, Inc.** enter into a cooperative agreement to further reduce the administrative costs of acquiring commercial items from the General Services Administration (GSA) Federal Supply Schedule Contract **GS-35F-386CA**.

Federal Supply Schedule contract BPAs eliminate contracting and open market costs such as: search for sources; the development of technical documents, solicitations and the evaluation of offers. Teaming Arrangements are permitted with Federal Supply Schedule Contractors in accordance with Federal Acquisition Regulation (FAR) 9.6.

This BPA will further decrease costs, reduce paperwork, and save time by eliminating the need for repetitive, individual purchases from the schedule contract. The end result is to create a purchasing mechanism for the ordering activity that works better and costs less.

Signatures

Ordering Activity

Date

Avoka USA, Inc.

Date

(CUSTOMER NAME)
 BLANKET PURCHASE AGREEMENT

Pursuant to GSA Federal Supply Schedule Contract Number **GS-35F-386CA**, Blanket Purchase Agreements, **Avoka USA, Inc.** agrees to the following terms of a Blanket Purchase Agreement (BPA) EXCLUSIVELY WITH (ordering activity):

(1) The following contract items can be ordered under this BPA. All orders placed against this BPA are subject to the terms and conditions of the contract, except as noted below:

MODEL NUMBER/PART NUMBER	*SPECIAL BPA DISCOUNT/PRICE
_____	_____
_____	_____
_____	_____

(2) Delivery:

DESTINATION	DELIVERY SCHEDULES / DATES
_____	_____
_____	_____
_____	_____

(3) The ordering activity estimates, but does not guarantee, that the volume of purchases through this agreement will be _____.

(4) This BPA does not obligate any funds.

(5) This BPA expires on _____ or at the end of the contract period, whichever is earlier.

(6) The following office(s) is hereby authorized to place orders under this BPA:

OFFICE	POINT OF CONTACT
_____	_____
_____	_____
_____	_____

(7) Orders will be placed against this BPA via Electronic Data Interchange (EDI), FAX, or paper.

(8) Unless otherwise agreed to, all deliveries under this BPA must be accompanied by delivery tickets or sales slips that must contain the following information as a minimum:

- (a) Name of Contractor;
- (b) Contract Number;
- (c) BPA Number;
- (d) Model Number or National Stock Number (NSN);
- (e) Purchase Order Number;
- (f) Date of Purchase;
- (g) Quantity, Unit Price, and Extension of Each Item (unit prices and extensions need not be shown when incompatible with the use of automated systems; provided, that the invoice is itemized to show the information); and
- (h) Date of Shipment.

(9) The requirements of a proper invoice are specified in the Federal Supply Schedule contract. Invoices will be submitted to the address specified within the purchase order transmission issued against this BPA.

(10) The terms and conditions included in this BPA apply to all purchases made pursuant to it. In the event of an inconsistency between the provisions of this BPA and the Contractor's invoice, the provisions of this BPA will take precedence.



BASIC GUIDELINES FOR USING “CONTRACTOR TEAM ARRANGEMENTS”

Federal Supply Schedule Contractors may use “Contractor Team Arrangements” (see FAR 9.6) to provide solutions when responding to a ordering activity requirements.

These Team Arrangements can be included under a Blanket Purchase Agreement (BPA). BPAs are permitted under all Federal Supply Schedule contracts.

Orders under a Team Arrangement are subject to terms and conditions of the Federal Supply Schedule Contract.

Participation in a Team Arrangement is limited to Federal Supply Schedule Contractors.

Customers should refer to FAR 9.6 for specific details on Team Arrangements.

Here is a general outline on how it works:

- The customer identifies their requirements.
- Federal Supply Schedule Contractors may individually meet the customers needs, or -
- Federal Supply Schedule Contractors may individually submit a Schedules “Team Solution” to meet the customer’s requirement.
- Customers make a best value selection.

**GSA NEGOTIATED END-USER LICENSE AGREEMENT FOR AVOKA SOFTWARE
SIN 132-32 AND 132-40**

1. Certain Definitions. The terms in quotes in this Section 0 have the meanings this Section 0 ascribes to them. Terms in quotes elsewhere in this License have the meanings ascribed to them where they appear.

“Additional Transaction” means a Transaction that Licensee purchases during a Term after the start of that Term.

“Avoka Reseller” means Avoka or a person whom Avoka has authorized to resell licenses to install Software on the purchaser’s Environment.

“Avoka” means Avoka Technologies Pty Ltd, Avoka (USA), Inc., or Avoka Europe Ltd. as specified in Section 0.

“Base Transaction” means a Transaction that Licensee purchases simultaneously with the start of a Term.

“Contact Information” means Licensee’s current street address, fax number (if any), telephone number, and electronic mail address at which Licensee will receive notice.

“Data,” whether or not capitalized, when used with respect to Licensee, means the electronic data or information Licensee collects and uses in connection with the Technology.

“Documentation” means the user manuals and/or technical publications Avoka or an authorized reseller supplies to Licensee in connection with the use of the Technology.

“Environment” means, with respect to a person, the person’s computers or, subject to subsection 0, the computers of a third party service (such as Amazon Web Services) the person has contracted for the person’s use.

“Intellectual Property Right,” whether or not capitalized, means a statutory, common law, or equitable right, existing now or in the future, wherever in the world, concerning: (a) inventions, discoveries, designs, products, methods, patents, or utility models, including developments or improvements; (b) copyrights in all literary works (including computer programs), artistic works, musical works, dramatic works, cinematograph films, sound recordings, broadcasts, or published editions, and any other works or subject matter in which copyright subsists now or in the future; (c) trade secrets, confidential information, or database rights; (d) trademarks, service marks, business names, trade names, domain names, or logos and get-up; and (e) designs, design patents, and design rights; in each case whether registered, the subject of an application for registration, registerable, or unregistered.

“License” means this Avoka End User License.

“Licensee” means the person or entity that has purchased a license to install Avoka’s Software on the person’s or entity’s Environment.

“Non-Avoka Application License File” means a directory of third-party licenses contained in a Software installation or Read Me file.

“Non-Avoka Application” means an online application or offline software product that someone other than Avoka provides, that is identified as such, and that interoperates with the Technology.

“Object Code,” whether or not capitalized, means the machine readable version of software code in binary form that a computer can process to produce intended results.

“Order Schedule” means the document by which Licensee purchases the License from an Avoka Reseller.

“Party,” whether or not capitalized, means either Licensee or Avoka. **“Third party”** when not hyphenated means a person other than Licensee or Avoka and when hyphenated means of a person other than Licensee or Avoka.

“Person,” whether or not capitalized, means any human being, sole proprietorship, partnership, joint venture, trust, unincorporated association, corporation, limited liability company, entity, or governmental body (whether federal, state, county, city, or otherwise and including any instrumentality, division, agency, or department thereof).

“Previous Term” means:

- a) Term that ended simultaneously with the commencement of the current Term; or
- b) any one of a series of Terms, each of which ended simultaneously with the commencement of the subsequent Term.

“Professional Services” means the performance of one or more engineering and related tasks that result in a deliverable or other services customized for Licensee for which Licensee has engaged Avoka pursuant to a statement of work.

“SmartForm” means an electronic form with capabilities beyond those of a traditional paper form, such as electronic completion, dynamic sections, database calls, and electronic submission.

“Software” means the software that an Avoka Reseller provides to Licensee for installation on a computer in Licensee’s Environment.

“Tax” means any tax or charge levied by any governmental body including but not limited to any value-added, sales, use, or withholding tax assessable by any local, state, provincial, federal, or foreign jurisdiction.

“Technology” means Avoka’s SmartForm Factory™ comprised of the Software, modules (such as SmartForm Composer) located in Avoka’s Environment that licensees may access remotely, and Avoka mobile applications (such as Avoka TransactField) that Users may download to mobile devices.

“Term” means the time specified on one or more Order Forms during which Licensee shall have the right to prepare SmartForms and process Transactions. Unless otherwise specified, **“Term”** means the then-current Term.

“Transaction” means an instance where a person completes one or more of the data fields in a SmartForm and then submits the data to Licensee.

“User” means a human being whom Licensee authorizes to use the Technology during the Term and to whom Licensee (or an Avoka Reseller at Licensee’s request) has supplied a user identification and password. Users may include but are not limited to Licensee’s employees, consultants, contractors, agents, and the employees, consultants, contractors, agents of third-parties who are providing services to Licensee.

“User Guide” means the online user guide for the Technology, as updated from time to time.

2. License Grant. Subject to the terms and conditions of this License and the Order Form, Avoka hereby grants Licensee a non-exclusive license to use the Object Code version of the Software on the number of central processing units in Licensee’s Environment specified on the Order Form during the Term.

3. Transactions. Subject to the terms and conditions of this License and the Order Form, during the Term Licensee may use the Technology to process:

- a) the Base Transactions Licensee purchased at the commencement of the Term; plus
- b) any Additional Transactions Licensee purchased during the Term; plus
- c) any unused Additional Transactions Licensee purchased during a Previous Term.

4. Use of the Software.

4.1 No Hosted Duplication. Licensee acknowledges that because Licensee has licensed the Software for installation on Licensee’s Environment, Licensee will not be able to access the Software on Avoka’s Environment unless Licensee has made an additional arrangement with Avoka.

4.2 Delivery. The Avoka Reseller will deliver the Software to Licensee electronically or from a file transfer site.

4.3 Installation Services. The Avoka Reseller will install the Software on Licensee’s Environment if Licensee has purchased installation services from the Avoka Reseller.

4.4 Hardware Availability. Licensee must provide, at Licensee’s sole expense, the hardware Licensee needs to operate the Software.

4.5 Backup Copies. Licensee may make and install a reasonable number of copies of the Software for backup and archival purposes. Licensee may use a copy as if it were the primary copy, but only to the extent the primary copy has failed or is destroyed.

4.6 Documentation. Licensee may make copies of the Documentation in connection with Licensee’s authorized use of the Technology, but no more than the amount reasonably necessary for such use. Any copy of the Documentation that Licensee makes must contain the same copyright and other proprietary notices that appear on or in the Documentation.

4.7 Outsourcing. Licensee may provide a copy of the Software to a third party outsourcing or facilities management contractor to operate run the Software on Licensee’s behalf, if:

- a) Licensee makes sure that the contractor complies with the terms of the Agreement as they relate to the use of the Technology on the same basis as applies to Licensee;
- b) the contractor uses the Technology only as part of Licensee’s business operations in the ordinary course; and
- c) Licensee remains fully liable for the contractor’s acts and omissions as they relate to the Technology and this License.

5. Compliance with Third-Party Licenses.

5.1 Generally. Licensee's right to use a Non-Avoka Application is subject to the notifications, limitations, and attributions pertaining to the Non-Avoka Application set forth in the Non-Avoka Application License Files. Licensee must not use any Non-Avoka Application in connection with the Technology unless Licensee is validly licensed to do so and then only to the extent this Agreement permits.

5.2 Other Third-Party Materials. Licensee's use of some third-party materials and services included in or accessed through the Technology may be subject to other terms and conditions typically found in a separate license agreement, terms of use file, or "Read Me" file located within or near the materials and services or in a Non-Avoka Application License File. No License or Order Form alters any rights or obligations Licensee may have under the terms and conditions governing third-party materials and services. Notwithstanding the foregoing, as between Avoka and Licensee, the disclaimer of warranty and limitation of liability provisions in this Agreement apply to each Non-Avoka Application, in addition to any warranty or limitation of liability provision in the applicable Non-Avoka Application License File.

6. Licensee Responsibilities for Licensee's Data. As between Avoka and Licensee, Licensee shall be solely responsible for the accuracy, quality and legality of Licensee's Data and of the means by which Licensee acquired the Data.

7. Usage Limitations. The portion of the Technology hosted on Avoka's Environment may be subject to limitations such as, for example, limits on disk storage space, on the number of calls Licensee is permitted to make against the software's application programming interface, and, for software that enables Licensee to provide public websites, on the number of page views by visitors to those websites. Any such limitations are specified in the User Guide.

8. Audit. Upon reasonable notice and as long as Avoka is in compliance with Licensee's security requirements, Avoka shall have the right to inspect Licensee's records during business hours solely for the purpose of verifying Licensee's compliance with this License. If, as a result of such inspection, it is determined that Licensee has processed more than the number of Transactions Licensee has purchased with respect to the period under review, then Avoka will invoice Licensee for the excess Transactions as specified in the Order Schedule or, if the Order Schedule is silent, at Avoka's then-current rates under the GSA Schedule.

9. Support Services. Avoka's obligations to help Licensee remedy a problem with the operation or performance of the Technology or to provide any other service to Licensee shall be set forth in a separate written agreement. If there is no other written agreement, then Avoka has no such obligation.

10. Title. Title to the Software and Documentation shall remain with Avoka or Avoka's suppliers at all times. The rights granted under this License are personal to Licensee, and do not extend to any subsidiary, parent, or affiliate of Licensee except as specified in the Order Form.

11. Prohibitions. Licensee shall not:

- a) copy any part of the Software or Documentation except for back-up purposes as set forth in this License;
- b) reverse engineer, reverse compile, or disassemble any portion of the Software or circumvent any license key information or allow others to reverse engineer, reverse compile, disassemble, or make or obtain copies of the Software;
- c) distribute, rent, lease, assign, or otherwise transfer any interest in the Software or Documentation;
- d) disclose benchmarks or other comparisons of the Software without Avoka's prior written consent which may be withheld in the exercise of Avoka's sole discretion;
- e) modify the Software;
- f) use the Software on any hardware, computer server, or other configuration that exceeds, in the aggregate, the number of central processing units, or other criteria, specified in the Order Form; or
- h) use the Software in Licensee's capacity as an application service provider for third parties.

In addition, Licensee shall not transfer or assign any interest in the Software or Documentation except upon Avoka's prior written consent, as Avoka may provide in the exercise of Avoka's sole discretion, and then only upon the written agreement by the assignee or transferee to the terms of this License.

12. Licensee's Personally Identifiable Information. Licensee shall not disclose to Avoka any personally identifiable information or other personal information about individuals contained in Licensee's records (including, without limitation, names, addresses, taxpayer identification numbers, and credit card and other financial information).

13. Feedback. Avoka shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Technology or other product or service any suggestions, enhancement requests, recommendations, or other feedback relating to the operation of the Technology that Licensee or any User provides to Avoka.

14. Specific Disclaimers of Warranty and Limitation of Liability. Licensee understands that Avoka provides no assurance that Licensee's network or software will operate with the Software. In addition, any change in the operating system or other software or configuration of Licensee's network may affect the performance and operation of the Software. Accordingly, Avoka shall have no liability, and Avoka makes no warranty, with respect to the performance of the Software (a) when used on any computer network or any portion thereof, (b) when used with third party software, or (c) in combination with third party software or hardware. Avoka warrants that (a) the SOFTWARE will, for a period of ninety (90) days from the date of licensee's receipt, perform substantially in accordance with Avoka's written materials accompanying it, and (b) any Support Services provided by Avoka shall be substantially as described in applicable written materials provided to licensee by Avoka.

EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING The Software and Documentation is provided "as is" without warranty of any kind, either express or implied including, without limitation, the implied warranties of merchantability, fitness for a particular purpose, title, and noninfringement, or any warranties arising out of conduct or trade practice. Licensee assumes full responsibility for the selection of any Software component or Software suite. No representations or other affirmation of fact, oral or written, including, without limitation, statements regarding suitability, or performance, whether made by Avoka's employees, representatives, licensees, or otherwise, which is not contained in this License, shall be deemed to be a warranty by Avoka for any purpose or give rise to any liability of Avoka whatsoever. Avoka does not warrant that the Software is error-free or that it will operate with Licensee's computer network without any impairment of the Software or Licensee's computer network or other software. Avoka also disclaims any express or implied warranty concerning the Support Services. Neither Avoka nor any of Avoka's suppliers shall be liable to Licensee or any third party for any defects in the Software or Documentation. Avoka will not be liable to Licensee for any lost profits, lost savings, loss of use, or other special, incidental, or consequential damages arising in tort, contract, or otherwise, or for any claim by any other party, arising out of the use of or inability to use the Software even if Avoka has been advised of the possibility of such damages. Avoka's liability to Licensee in any event shall not exceed the amount of fees paid to Avoka with respect to this License. The fees charged by Avoka are in consideration of the disclaimers and limitations of liability set forth in this License, and Avoka would not and does not offer this License without such disclaimers and limitations of liability. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from Avoka's negligence; (2) for fraud; (3) for any other matter for which liability cannot be excluded by law or (4) express remedies provided under any FAR, GSAR or Schedule 70 solicitation clauses incorporated into the GSA Schedule 70 contract.

15. High Risk Activities. None of the Software, Documentation, or Support Services is licensed for use in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Software, Documentation, or Support Services could lead directly to death, personal injury, or severe physical or environmental damage ("High Risk Activities"). Accordingly, Avoka and its suppliers specifically disclaim any express or implied warranty of fitness for High Risk Activities. Licensee agrees that Avoka and its suppliers will not be liable for any claims or damages arising from the use of the Software in such applications.

Termination. Recourse against the United States for any alleged breach of this agreement must be made under the terms of the Federal Tort Claims Act or as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

16. In event of termination, Licensee shall immediately return to Avoka the Software, Documentation, and any related materials at Licensee's expense and without refund of any fees paid in advance.

17. Governing Law. The law that applies in any dispute arising out of or in connection with this Agreement, and the courts that may adjudicate any such dispute, are as follows:

If the primary copy of the Software is installed on a computer in:	North America
this License is granted by:	Avoka (USA), Inc., a California corporation
the governing law is:	United States Federal law

18. Manner of Giving Notice. All notices, permissions and approvals under this Agreement shall be in writing. Licensee shall ensure that the Avoka Reseller has Licensee's current Contact Information. Licensee shall make an ordinary, good faith effort to ensure that Avoka actually receives any notice Licensee gives to Avoka. By failing to accept notice or to provide current Contact Information, Licensee shall waive any right to complain about any failure of Avoka to deliver notice to a particular address.

**GSA NEGOTIATED MASTER SUPPLY AGREEMENT FOR AVOKA SOFTWARE
SIN 132-32 AND 132-40**

Master Supply Agreement



AGREEMENT DETAILS

Parties	Avoka (USA), Inc. (" Avoka ") 10901 West 120 th Avenue, Suite 335 Broomfield, CO 80021 USA Phone Number: +1-720-316-7995 Contact Person: Contract Email Address:
	[Customer Entity] (" Customer ") [Address] Phone Number: Contact Person: Contract Email Address:
Effective Date	
Initial Term	

Executed as an Agreement:	
Signed for on behalf of Avoka:	Signed for on behalf of Customer:
Authorized Signatory Name: Title:	Authorized Signatory Name: Title:

SECTION A – STANDARD TERMS

These Standard Terms will apply to the supply of any product or service to the Customer by Avoka. Capitalized terms are defined in Section B

1. DURATION

1.1 This Agreement commences on the Effective Date and continues for the Term unless otherwise earlier terminated in accordance with the provisions of this Agreement.

2. ORDERS

2.1 When Customer requires supply of products or services by Avoka, Customer will send an Order to Avoka. The price and payment milestones for the products and services will be set out in the Order.

2.2 When the parties agree the details of an Order, each Order will result in the formation of a separate agreement between the parties for the offered products and services. An Order will come into force on the Order Effective Date set out in the Order for the term of that Order. If no such date is specified in the Order, the effective date of the Order will be the date on which the parties execute the Order.

2.3 **Pricing Adjustments.** Subject to any specific terms to the contrary in any applicable Order, Avoka will not increase its License fee provided to Client or an Affiliate during the Term of this Agreement.

3. USE OF THE TECHNOLOGY

3.1 Permitted Use of the Technology Hosted on Avoka's Environment.

3.1.1 Avoka's Responsibilities. Avoka shall:

- a) provide Standard Support for the products identified on an Order are being hosted on Avoka's Environment at no additional charge;
- b) use commercially reasonable efforts to make the products identified on an Order as being hosted on Avoka's Environment available to Customer 24 hours a day, 7 days a week, except for:
 - (i) planned downtime (of which Avoka shall give at least 8 hours' notice via the Technology and which Avoka shall schedule to the extent practicable during periods of reduced usage); or
 - (ii) any unavailability caused by circumstances beyond Avoka's reasonable control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Avoka's employees), Internet service provider failures or delays, or denial of service attacks; and
- c) make the products identified on an Order as being hosted on Avoka's Environment available to Customer only in accordance with applicable laws and government regulations.

3.1.2 Avoka Protection of Customer Data. Avoka shall maintain industry standard administrative, physical, and technical safeguards to protect the security, confidentiality, and integrity of any Customer Data stored on Avoka's Environment. Avoka shall not:

- a) modify any such Customer Data;
- b) disclose any such Customer Data without Customer's prior written consent (other than pursuant to Section 0 (Disclosure Pursuant to Government Order) of the Agreement); or
- c) access any such Customer Data except to make the Technology hosted on Avoka's Environment available to Customer and prevent or address service or technical problems, or otherwise at Customer's request.

3.1.3 Customer Responsibilities for Customer's Data. As between Avoka and Customer, Customer shall be solely responsible for the accuracy, quality and legality of Customer's Data and of the means by which Customer acquired the Data.

3.1.4 Usage Limitations. The products identified on an Order as being hosted on Avoka's Environment may be subject to limitations such as, for example, limits on disk storage space, on the number of calls Customer is permitted to make against the software's application programming interface, and, for software that enables Customer to provide public websites, on the number of page views by visitors to those websites. Any such limitations are specified in the User Guide.

3.1.5 Audit. Upon reasonable notice and as long as Avoka complies with Customer's security requirements and no more than once in a 12 month period, Avoka shall have the right to inspect Customer's records during business hours solely for the purpose of verifying Customer's compliance with the terms of the Agreement. If, as a result of such inspection, it is determined that Customer has processed more than the number of Transactions Customer has purchased with respect to the period under review, then Avoka will invoice Customer for the additional Transactions as specified in an Order.

3.2 Permitted Use of the Technology Installed on Customer's Premises.

3.2.1 License Grant. Subject to the terms and conditions of the Agreement, Avoka hereby grants Customer a non-exclusive, world-wide, irrevocable, royalty fee license to use the Object Code version of the Software products identified on an Order as being located on computers that Customer uses for business operations at Customer's Environment.

3.2.2 Production Instance. Customer is entitled to install Software on a single Production Environment unless otherwise specified on an Order.

3.2.3 No Hosted Duplication. Customer acknowledges that because Customer has licensed the Software for installation on Customer's computers, Customer will not be able to access the software on Avoka's Environment unless Customer has made an additional arrangement with Avoka.

3.2.4 Delivery. Avoka will deliver the Software to Customer electronically or from a file transfer site.

3.2.5 Installation Services. Avoka will install the Software on Customer's computers specified in the order form, if Customer has purchased installation services.

3.2.6 Hardware Availability. Customer must provide the hardware Customer needs to operate the Software at Customer's sole expense.

3.2.7 Backup Copies. Customer may make and install a reasonable number of copies of the Software for backup and archival purposes. Customer may use a copy as if it were the primary copy, but only to the extent the primary copy has failed or is destroyed.

3.2.8 Documentation. Customer may make copies of the Documentation in connection with Customer's authorized use of the Technology, but no more than the amount reasonably necessary for such use. Any copy of the Documentation that Customer makes must contain the same copyright and other proprietary notices that appear on or in the Documentation.

3.2.9 Outsourcing. Customer may provide a copy of the Software to a third party outsourcing or facilities management contractor to operate run the Software on Customer's behalf, if:

- a) Customer makes sure that the contractor complies with the terms of the Agreement as they relate to the use of the Technology on the same basis as applies to Customer;
- b) the contractor uses the Technology only as part of Customer's business operations in the ordinary course; and
- c) Customer remains fully liable for the contractor's acts and omissions as they relate to the Technology and this Agreement.

3.2.10 Audit. Within thirty (30) days after the end of each calendar quarter ended after the start of the Term, Customer shall deliver to Avoka a report, certified by Customer's chief financial officer or other officer acceptable to Avoka, in such format (if any) as Avoka may reasonably request. Upon reasonable notice and as long as Avoka complies with Customer's security requirements and no more than once in a 12 month period, Avoka shall have the right to inspect Customer's records during business hours solely for the purpose of verifying Customer's reports and compliance with the terms of the Agreement. If, as a result of such inspection, it is determined that Customer has processed more than the number of Transactions Customer has purchased with respect to the period under review, then Avoka will invoice Customer for the additional Transactions as specified in an Order.

3.3 Designation of Users. Customer shall not authorize any person to use or access the Technology through Customer's premises or facilities unless Customer has designated the person as a User. A person Customer designates as a User shall only use the Technology for Customer's business purposes. Customer shall be solely responsible for the User's use of the Technology and for any consequence arising from the designation of the person as a User.

3.4 Access to Tutorials and Demonstrations. A User may access the tutorials, demonstrations, and User Guide available on Avoka's website. Avoka may provide additional training and Professional Services for a fee as provided in an Order.

3.5 No Source Code License. Except as specified in an Order, no provision in this Agreement is intended to grant Customer any right to access, study, copy, or modify the Source Code of the Technology software.

4. TECHNOLOGY SUPPORT SERVICES

4.1 Avoka's obligations to help Customer remedy a problem with the operation or performance of the Technology or to provide any other service to Customer shall be set forth in a Technology Support Services Section or an Order. If there is no Technology Support Services Section or Technology Support Services are not defined in an Order, then Avoka has no such obligation.

5. THIRD-PARTY LICENSES

5.1 **Generally.** Customer's right to use a Non-Avoka Application is subject to the notifications, limitations, and attributions pertaining to the Non-Avoka Application set forth in the Non-Avoka Application License Files. Customer must not use any Non-Avoka Application in connection with the Technology unless Customer is validly licensed to do so and then only to the extent this Agreement permits.

5.2 **Other Third-Party Materials.** Customer's use of some third-party materials and services included in or accessed through the Technology may be subject to other terms and conditions typically found in a separate license agreement, terms of use file, or "Read Me" file located within or near the materials and services or in a Non-Avoka Application License File. No License alters any rights or obligations Customer may have under the terms and conditions governing third-party materials and services. Notwithstanding the foregoing, as between Avoka and Customer, the disclaimer of warranty and limitation of liability provisions in this Agreement apply to each Non-Avoka Application, in addition to any warranty or limitation of liability provision in the applicable Non-Avoka Application License File.

6. FEES

6.1 **Purchase Order or Payment Required.** Customer may not access or use the Technology until Customer has delivered to Avoka (and Avoka has accepted) an Order accompanied by a valid purchase order or alternative document reasonably acceptable to Avoka covering the cost of products and services on an Order. Avoka may further condition Customer's access to and use of the Technology upon receipt of payment for the items specified in an Order.

6.2 **Due Date.** Unless otherwise stated on an Order, invoiced charges are due net 30 days from the invoice date. Customer is responsible for providing complete and accurate Contact Information to Avoka and for notifying Avoka of any changes to Customer's Contact Information.

6.3 **Taxes.** Unless otherwise stated in an Order, Avoka's fees do not include any Taxes. Customer is responsible for paying all Taxes associated with Customer's purchases from Avoka. If Avoka has a legal obligation to pay or collect Taxes for which Customer is responsible under this Section 0, Avoka may invoice the amount to Customer in a manner that conforms to the applicable tax law and Customer shall pay the amount unless Customer provides Avoka with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Avoka is solely responsible for taxes assessable against Avoka based on Avoka's income, property, and employees.

7. PROPRIETARY RIGHTS

7.1 **Reservation of Rights in Technology.** Subject to the limited rights unambiguously granted under this Agreement, Avoka reserves all right, title, and interest in and to the Technology, including all related intellectual property rights. Avoka does not grant any rights to Customer other than as unambiguously set forth in this Agreement.

7.2 **Copying, Use Restrictions, and Sublicensing.** Except as unambiguously permitted in this Agreement or in an Order, Customer shall not, and shall not permit or help any other person to:

- a) copy (other than copying or framing on Customer's own intranets, extranets, customer portals, or otherwise for Customer's own internal business purposes), except as permitted in an Order or otherwise with Avoka's prior written consent;
- b) modify, enhance, adapt, or create derivative works of the Technology without Avoka's prior written consent;
- c) reverse engineer or reverse compile the whole or any part of the Technology except as the law may affirmatively allow;
- d) sublicense any of Customer's rights under this Agreement or a permit a third-party to use or modify the Technology;
- e) provide the Technology directly or indirectly to any third party;
- f) use the Technology to operate a service, whether for a fee, gratuitously, or otherwise, that allows third parties to use the Technology to create SmartForms;
- g) use a platform other than the Technology or Adobe® LiveCycle® Process Management software to host SmartForms created with the Technology;
- h) rent, lease, lend, or grant other rights in the Technology (including rights on a membership or subscription basis), or otherwise use the Technology on behalf of third parties;

- i) use any technology or know-how learned from the Technology to create any software or other technology that has features or functionality the same as or similar to the features and functionality of the Technology; or
- j) remove or alter any copyright, trademark, or other proprietary notices, legends, symbols, or labels appearing on the Technology or in the User Guide.

7.3 Customer's SmartForms. Subject to Avoka's rights, Customer shall own any intellectual property rights associated with the specific SmartForms that Customer creates. Ownership of any intellectual property rights associated with the specific SmartForms that Avoka creates for Customer in connection with Professional Services Avoka provides to Customer shall be as specified in an Order.

7.4 Customer's Data. Except for such access as is appropriate to provide the services Avoka has agreed to provide to Customer, Avoka acquires no right, title, or interest from Customer or Customer's licensors under this Agreement in or to Customer's Data, including any intellectual property rights.

7.5 Customer's Personally Identifiable Information. Customer shall not disclose to Avoka any personally identifiable information or other personal information about individuals contained in Customer's records (including, without limitation, names, addresses, taxpayer identification numbers, and credit card and other financial information).

7.6 Feedback. Avoka shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Technology or other product or service any suggestions, enhancement requests, recommendations, or other feedback relating to the operation of the Technology that Customer or any User provides to Avoka.

8. CONFIDENTIALITY

8.1 Definition of Confidential Information. As used in this Agreement, "**Confidential Information**" means all confidential information disclosed by a party (a "**Discloser**") to the other party (a "**Recipient**"), whether orally or in writing, that the Discloser has designated as confidential or that the Recipient should reasonably understand to be confidential given the nature of the information and the circumstances of disclosure. All Confidential Information shall be so marked. Customer's Confidential Information includes Customer's Data. Avoka's Confidential Information includes the Technology. Confidential Information of each party includes the Discloser's business and marketing plans, technology, and technical information, product plans and designs, and business processes. Confidential Information (other than Customer's Data) does not include any information that:

- a) is or becomes generally known to the public without breach of any obligation the Recipient owed to the Discloser;
- b) was known to the Recipient without breach of any obligation owed to the Discloser before the Discloser disclosed the information to the Recipient;
- c) is received from a third-party without breach of any obligation the third-party owed to the Discloser; or
- d) the Recipient independently developed.

8.2 Protection of Confidential Information. The Recipient must use the same degree of care that the Recipient uses to protect the confidentiality of the Recipient's own confidential information of like kind (but in no event less than reasonable care):

- a) not to use any Confidential Information of the Discloser for any purpose outside the scope of this Agreement; and
- b) except as the Discloser otherwise authorizes in writing, to limit access to Confidential Information to those of the Recipient's and the Recipient's Affiliates' employees, contractors, and agents who need the access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Recipient containing protections no less stringent than those in this Agreement.

8.3 Disclosure Pursuant to Government Order. A Recipient may disclose Confidential Information pursuant to a Court order, Law, or requirement of a governmental body if the Recipient immediately notifies the Discloser of the request for the information so that the Discloser may seek a protective order or otherwise preserve the confidentiality of the information.

8.4 Terms of this Agreement. Neither party shall disclose the terms of this Agreement or an Order to any third-party other than:

- a) Customer's Affiliates whose personnel Customer has designated as Users;
- b) Avoka's Affiliates for the purpose of providing the Technology and services to Customer;
- c) the party's legal counsel and accountants for the sole purpose of advising the party with respect to this Agreement; or
- d) as may be required by an investor, acquiring company, bank, or other financial institution, under appropriate non-disclosure terms, in connection with a merger, acquisition, financing, loan, or similar transaction, solely for the purpose of evaluating the party's business.

8.5 Return of Confidential Materials. Upon the Discloser's written request, the Recipient must promptly return or destroy all of the Discloser's Confidential Information and related materials in the Recipient's possession and discontinue all further use of the Discloser's Confidential Information. Upon the Discloser's request, the Recipient will promptly certify that the Recipient has taken such action.

9. WARRANTIES AND DISCLAIMERS

9.1 Avoka's Warranties. Avoka warrants that:

- a) Avoka has validly entered into this Agreement and has the legal power to do so;
- b) the Technology will perform materially in accordance with the User Guide; and
- c) Avoka will not transmit Malicious Code to Customer.

Avoka will not be deemed to breach this warranty, however, if Customer or a User installs a file containing Malicious Code on to a computer on which the Technology software resides and later exports a file containing the Malicious Code or other Malicious Code created from the installed Malicious Code. For any breach of a warranty above, Customer's exclusive remedy shall be as provided in Section 0 (Termination for Cause).

9.2 **Customer's Warranties.** Customer warrants that Customer has validly entered into this Agreement and has the legal power to do so.

9.3 **Disclaimer.** Except as this Agreement unambiguously provides, neither party makes any warranty of any kind, whether express, implied, statutory, or otherwise, and each party specifically disclaims all implied warranties, including any warranties of merchantability or fitness for a particular purpose, to the maximum extent permitted by applicable law.

9.4 **Beta Testing.** From time to time Avoka may invite Customer to try, at no charge, Avoka's products, product features, or services that are not generally available to Avoka's customers ("**Non-GA Products**"). Customer may accept or decline any such trial in Customer's sole discretion. Any Non-GA Products will be clearly designated as beta, pilot, limited release, developer preview, experimental, non-production, or with a description of similar import. Non-GA Products are provided for evaluation purposes and not for production use, are not supported, may contain bugs or errors, and may be subject to additional terms. Non-GA Products are provided "as is" with no express or implied warranty. Avoka may discontinue Non-GA Products at any time in Avoka's sole discretion and might never make them generally available.

9.5 **Effect of Software Upgrades on Existing Forms.** Customer acknowledges that periodic changes to the Technology software may cause SmartForms Customer has previously created to change their behavior. Customer shall be solely responsible for testing the behavior of Customer's SmartForms following any revision to the Technology software and making desired revisions to the SmartForms. Avoka's only obligation to assist Customer with testing and revising SmartForms is to provide the Technology Support Services or Professional Services Customer may purchase.

10. MUTUAL INDEMNIFICATION

10.1 **Indemnification by Avoka.** Avoka will defend Customer against any claim, demand, suit, or proceeding made or brought against Customer by a third-party alleging that the use of the Technology as permitted under this Agreement infringes or misappropriates the intellectual property rights of a third-party (a "**Claim Against Customer**"), and shall indemnify Customer for any damages, attorney fees, and costs finally awarded against Customer as a result of, and for amounts paid by Customer under a court-approved settlement of, a Claim Against Customer. As a condition to Avoka's obligations under this Section 0 Customer must

- (a) promptly give Avoka written notice of the Claim Against Customer;
- (b) give Avoka control of the defense and settlement of the Claim Against Customer to the extent permitted by 28 USC 516 (provided that Avoka may not settle any Claim Against Customer unless the settlement unconditionally releases Customer of all liability); and
- (c) provide to Avoka all reasonable assistance, at Avoka's expense.

10.2 **Prevention and Mitigation.** In the event of a Claim Against Customer, or if Avoka reasonably believes the Technology may be vulnerable to a claim of infringement or misappropriation, Avoka may, in Avoka's discretion, and at no cost to Customer:

- (a) modify the Technology so that the vulnerability is removed or mitigated, without being deemed to have breached Avoka's warranties under Section 0 (Avoka's Warranties);
- (b) obtain a license for Customer's continued use of the Technology in accordance with this Agreement;

- (c) notify Customer of the facts and circumstances that Avoka believes make the Technology vulnerable to a claim of infringement or misappropriation, thirty (30) days after which time Customer shall assume all risk of a Claim Against Customer with respect to the disclosed facts and circumstances to the extent Customer continues to use the Technology; or
- (d) terminate the License upon 30 days' written notice.

10.3 Exclusive Remedy. This Section 0 (Mutual Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section 0.

11. LIMITATION OF LIABILITY

11.1 Limitation of Liability. Neither party's liability with respect to any single incident arising out of or related to this Agreement (whether in contract or tort or under any other theory of liability) shall exceed the amount Customer has paid under this Agreement in the 12 months preceding the incident. In no event shall either party's aggregate liability arising out of or related to this Agreement (whether in contract or tort or under any other theory of liability) exceed the total amount Customer has paid under this Agreement. The foregoing shall not limit Customer's payment obligations under Section 0 (Fees).

11.2 Exclusion of Consequential and Related Damages. In no event shall either party have any liability to the other for any lost profits or revenues or for any indirect, special, incidental, consequential, cover, or punitive damages however caused, whether in contract, tort, or any other theory of liability, and whether or not the party has been advised of the possibility of such damages. The foregoing disclaimer shall not apply to the extent prohibited by applicable law.

11.3 The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from Avoka's negligence; (2) for fraud; (3) for any other matter for which liability cannot be excluded by law or (4) express remedies provided under any FAR, GSAR or Schedule 70 solicitation clauses incorporated into the GSA Schedule 70 contract.

12. TERMINATION

12.1 Termination Recourse against the United States for any alleged breach of this agreement must be made under the terms of the Federal Tort Claims Act or as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or a ction arising under the contract, and comply with any decision of the Contracting Officer.

12.2 No Refund upon Termination. Fees paid under this Agreement are not refundable.

12.3 Surviving Provisions. Sections 0 (Fees), 0 (Proprietary Rights), 0 (Confidentiality), 0 (Disclaimer), 0 (Mutual Indemnification), 0 (Limitation of Liability), 0 (Notices, Governing Law, and Jurisdiction), and 0 (General Provisions) shall survive any termination or expiration of this Agreement.

13. NOTICES, GOVERNING LAW, AND JURISDICTION

13.1 General. The law that applies in any dispute arising out of or in connection with this Agreement, and the courts that may adjudicate any such dispute, are as follows.

If Customer is contracting with:	Avoka (USA), Inc., a California corporation
then the governing law is:	United States federal law
And the courts having exclusive jurisdiction are in:	

13.2 Manner of Giving Notice. Except as otherwise specified in this Agreement, all notices, permissions and approvals under this Agreement shall be in writing. Each party shall ensure that the other has the party's current Contact Information. A party giving a notice shall make an ordinary, good faith effort to ensure that the intended recipient actually receives the notice. A party who fails to accept notice or to provide current Contact Information waives any right to complain about any failure to deliver notice to a particular address.

14. GENERAL PROVISIONS

14.1 Anti-Corruption. Each party confirms that the party has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of the other party's employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.

14.2 Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

14.3 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.



14.4 Waiver. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.

14.5 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect. Should a court decline to so modify this Agreement, either party may initiate arbitration with a leading commercial arbitration organization to so modify this Agreement.

14.6 Assignment. Neither party may assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). **Export Compliance.** The Technology, other technology Avoka makes available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is **not named on any U.S. government denied-party list**. Customer shall not permit Users to access or use the Technology in a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan, or Syria) or person (certain designated terrorist persons or groups) or in violation of any U.S. export law or regulation.

14.7 Force Majeure. Avoka shall not be liable for any breach of this Agreement or any delay in performance resulting from: (a) a failure and/or deficiency in equipment or software of a third party (including with respect to a tracking device, a satellite service, the ground infrastructure, a social media platform, Microsoft's Azure cloud infrastructure, Google Maps, or the equipment or software comprising the Internet); (b) a strike, lockout, or other labor dispute; (c) fire, earthquake, flood, act of God, or other natural disaster; (d) civil commotion, war, riot, or criminal act of a third party; (e) casualty or accident; (f) shortage of transportation facilities, detention of goods by custom authorities, or loss of goods in public or private warehouse; (g) delay in the delivery of energy, raw or finished materials, parts, or completed merchandise by suppliers thereof; (h) mandatory compliance with any law, ruling, order, regulation, requirement, or instruction of any court or other governmental authority; or (i) other cause beyond Avoka's reasonable control of or occurring without Avoka's fault.

14.8 Entire Agreement. This Agreement, including the Order and the underlying terms of the GSA Contract, is the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning the Technology and Avoka's services (the "**Subject Matter**"). No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment, or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and the Order, the terms of the Order shall prevail if the change is manually signed by each party and states the number of the specific Section of this Agreement to be modified. Otherwise, the provisions in the body of this Agreement shall prevail. No terms or conditions stated in Customer's purchase order or other order documentation (excluding an Order) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void, notwithstanding any language to the contrary in the purchase order or other order documentation. This Agreement does not include any provision that applicable law, would otherwise imply, to the extent the law allows the parties to exclude, waive, or disclaim the provision.

SECTION B - DEFINITIONS

The following terms apply unless the context requires otherwise:

"Affiliate," when used with respect to a party, means an entity that the party directly or indirectly control, are controlled by, or are under common control with. **"Control,"** for purposes of this definition, means direct or indirect ownership or control of more than 50% of an entity's voting interests.

"Agreement" means this Master Supply Agreement, including an Order.

"Avoka's Environment" means on Avoka's computers or on the computers of a third party service Avoka has contracted for the purpose, such as Amazon Web Services.

"Contact Information" means a person's current street address, fax number (if any), telephone number, and electronic mail address at which the person will receive notice and, with respect to Customer, at which Customer shall receive invoices.

"Data," whether or not capitalized, when used with respect to Customer, means the electronic data or information Customer collects and uses in connection with the Technology.

"Documentation" means the user manuals and/or technical publications Avoka supplies to Customer in connection with the use of the Technology.

"Effective Date" means the date set out in the Agreement Details.

"Hosted Services" means the service that Avoka provides to Customer by allowing Customer to access Avoka's computers or the computers of a third party service Avoka has contracted for the purpose, such as Amazon Web Services as described in the relevant Order. **"Hosted Services"** does not include any Non-Avoka Application.

"Intellectual Property Right," whether or not capitalized, means a statutory, common law, or equitable right, existing now or in the future, wherever in the world, concerning: (a) inventions, discoveries, designs, products, methods, patents, or utility models, including developments or improvements; (b) copyrights in all literary works (including computer programs), artistic works, musical works, dramatic works, cinematograph films, sound recordings, broadcasts, or published editions, and any other works or subject matter in which copyright subsists now or in the future; (c) trade secrets, confidential information, or database rights; (d) trade marks, service marks, business names, trade names, domain names, or logos and get-up; and (e) designs, design patents, and design rights; in each case whether registered, the subject of an application for registration, registrable, or unregistered.

"License" means a license Avoka grants Customer in an Order (if an Order grants a license).

"Malicious Code" means a virus, worm, time bomb, Trojan horse, or other harmful or malicious code, file, script, agent, or program.

"Non-Avoka Application" means an online application or offline software product that someone other than Avoka provides, that is identified as such, and that interoperates with the Technology.

"Non-Avoka Application License File" means a directory of third-party licenses contained in a Technology installation or Read Me file.

"Object Code," whether or not capitalized, means the machine readable version of software code in binary form that a computer can process to produce intended results.

"Order" means the written document that Customer submits to Avoka for the purchase of products and services.

"Party," whether or not capitalized, means either Customer or Avoka.

"Patron" means a person who performs a Transaction, regardless of whether the person pays money as part of the Transaction.

"Person," whether or not capitalized, means any human being, sole proprietorship, partnership, joint venture, trust, unincorporated association, corporation, limited liability company, entity, or governmental body (whether federal, state, county, city, or otherwise and including any instrumentality, division, agency, or department thereof).

"Production Environment" means a set of server computers in a single environment that support business operations.

"Professional Services" means a the performance of one or more engineering and related tasks that result in a deliverable or other services customized for Customer for which Customer has engaged Avoka pursuant to an Order.

"SmartForm" means an electronic form with capabilities beyond those of a traditional paper form, such as electronic completion, dynamic sections, database calls, and electronic submission.

"Software" means the software for the products identified on an Order as being located on Customer's premises.

“Technology” means Avoka’s Transact technology identified on an Order.

“Term” means initial Term and any extension under clause 1.2 of the Standard Terms.

“Transaction” means an instance where a Patron completes one or more of the data fields in a SmartForm and then submits the data to Customer.

“Source Code,” whether or not capitalized, means a set of instructions and statements written by a programmer using a computer programming language, from which object code is compiled.

“Technology Support Services” means Avoka’s obligation to help Customer remedy a problem with the operation or performance of the Technology or to update the Technology if and to the extent that Customer has purchased support services in an Order.

“Tax” means any tax or charge levied by any governmental body including but not limited to any value-added, sales, use, or withholding tax assessable by any local, state, provincial, federal, or foreign jurisdiction.

“User Guide” means the online user guide for the Technology, as updated from time to time.

“User” means a human being whom Customer authorizes to use the Technology and to whom Customer (or Avoka at Customer’s request) has supplied a user identification and password. Users may include but are not limited to Customer’s employees, consultants, contractors, agents, and the employees, consultants, contractors, agents of third-parties who are providing services to Customer.

SECTION C - TECHNOLOGY SUPPORT SERVICES

In addition to the Standard Terms, the provisions of the Technology Support Services section will apply to the supply of Technology to Customer by Avoka. Unless defined in this section, any capitalized terms are defined in Section B of the Standard Terms.

1. TECHNOLOGY SUPPORT SERVICES

1.1 Levels of Support. Upon receiving a Support Request during the Term, Avoka will use commercially reasonable efforts during the Term to provide the response specified below during the Hours of Support within the Response Time.

Severity	Support Response Time
Level 1	1 hour
Level 2	4 hours
Level 3	1 business day
Level 4	2 business days

1.2 Emergency Service. At Customer's request, Avoka may provide Support Services outside of the Hours of Support, in which case Customer shall pay Avoka additional fees at Avoka's then-current hourly rates. Hourly Support Services are billed in 30 minute increments.

1.3 Support Contacts. Customer may make reasonable changes to Customer's designated Support Contacts by following the procedures specified on Avoka's web site. Avoka will not withhold Avoka's consent to the designation of Customer's Support Contacts unreasonably.

1.4 Amendments, Updates, and Upgrades. Avoka will make Amendments, Updates, and Upgrades to the Technology software available to the Customer at around the same time that Avoka makes them generally available to other Avoka customers. Once Avoka has provided Customer with an Amendment, Update, or Upgrade that addresses the subject of a Service Request, Avoka shall have no further obligation to provide support with respect to the Service Request until Customer has installed the Amendment, Update, or Upgrade. Avoka only supports the current release of the Technology software and the immediately prior release as indicated by the number to the left of the decimal point of the Version number.

1.5 Compliance Documentation. Within thirty (30) days following each anniversary date of the Commencement Date, or as Avoka may otherwise request, Customer shall deliver to Avoka a statement, that one of Customer's executive officers has certified to be accurate, confirming that Customer is in compliance with the Agreement including, without limitation, the limitations and variables determining the fees set forth on an Order. The certification must be in a form and with such detail as Avoka may reasonably request. Customer shall maintain complete and accurate records to support and document Customer's use of the Technology in accordance with the Agreement for so long as Customer uses the Technology and for two (2) years thereafter.

2. DEFINITIONS.

"Amendment," when used with respect to software, means a fix, patch, or change to a software product.

"Hours of Support" means the hours of support specified in the Support Hours and Contacts section of an Order.

"Level 1 Severity" means a problem that results in extremely serious interruptions to a production system. It has affected, or could affect, the entire user community.

"Level 2 Severity" means a problem that results in serious interruptions to normal operations, and will negatively impact an enterprise-wide system, or urgent deadlines are at risk. In a production system, important tasks cannot be performed, but the error does not impair essential operations.

"Level 3 Severity" means a problem causes interruptions in normal operations. It does not prevent operation of a production system and in the case that it does, degradation in performance is minor.

"Level 4 Severity" means a minor problem that is not significant to Customer's operations or that Customer can circumvent.

"Response Time" means the time during the Hours of Support starting with initial contact and ending when Avoka assigns engineer to the Support Request.

"Support Contact" means an individual whom Customer has named as a Support Contact in an Order.

"Support Request" means a request for support from a Support Contact that satisfies all of Avoka's requirements for a request for support.

“Update,” when used with respect to a software product, means a version of the software product that has a different version number than the prior version of the product and includes Amendments, bug fixes, and other limited improvements. Updates are typically identified by a change in the hundredths digit [x.x.x] of the release number (e.g., 1.1.1, 1.1.2, 1.1.3) or Service Pack number (e.g., 1.1SP1, 1.1SP2).

“Upgrade,” when used with respect to a software product, means a functional and/or feature improvement made to the software product to keep the current version of the product competitive in terms of capabilities, features, or pricing in the relevant market. Upgrades are typically identified by a change in the tenths digit [x.x] of the release number (e.g., 1.1, 1.2, 1.3).

“Version” means a functionally-equivalent replacement for an existing software product that either incorporates some or all of the product’s material functionality into one or more new products whereby the owner of the product stops distributing and/or supporting the replaced software product. Versions are typically identified by a change in the units digit [x.0] of the release number (e.g. 2.0, 3.0, 4.0).